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ABSTRACT

Summaries of special provisions and ratified bills are presented in this report on educational legislation conducted by the 1990 session of the North Carolina General Assembly. Contents include legislation pertaining to education budget expansions and reductions and summaries of special provisions and ratified bills. Legislative outcomes include provisions for forestalling additional funding for the Basic Education Program; providing a 6 percent salary increase for teachers and administrators; forming commissions to study driver education, parental involvement, and year-round education and also to conduct a policy review of public schools, community colleges, and the university system; and granting sole authority to local boards of education in the selection of supplementary instructional materials regardless of advertising content. Appendixes include descriptions of reports, studies, and study commissions affecting education, copies of special provisions, and the full texts of ratified bills. (LMI)

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Report on Education Legislation

1990 Session of the General Assembly

August, 1990

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NORTH CAROLINA DEPARTMENT OF PUBLIC INSTRUCTION
BOB ETHERIDGE, STATE SUPERINTENDENT

EA 022 781

Overview

Education was the consuming issue in the General Assembly this session as legislators wrestled with the best way to provide funding for education without additional revenue. In the end, after the longest "short" session on record, legislators cut $71.5 million from the scheduled expansion of the Basic Education Program and added two years to the implementation. Legislators fulfulled their commitment to salaries by providing 6 percent salary increases for educators and state employees. Senate Bill 2, the School Improvement and Accountability Act, also was funded.

Legislators debated transferring the driver education program from the Department of Public Instruction to the Department of Transportation. This issue was resolved when legislators approved studying the driver education program before any move is made. A special study commission of legislators was set up to review the policies and programs of public schools, community colleges and the university system. Other areas to be studied are parental involvement in schools and year-round education.

The furor regarding Channel One continued in the General Assembly as legislators approved a provision that gives local boards of education "sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising." The North Carolina Supreme Court's ruling on Channel One could affect this legislation.

Legislators voted in favor of a 6 percent salary increase for administrators rather than funding the new administrator salary schedule. Teachers, also, will receive 6 percent salary increases for 1990-91. Salaries of certifed employees could increase more since the differentiated pay monies in Senate Bill 2 were funded.

All of the special provisions and bills relating to education are included in this publication, *Report on Education Legislation*. The Public School Fund budget and highlights of special provisions and bills are in the front part of this publication. Copies of the bills and special provisions are included in the Appendix.

If you need additional information on the actions of the General Assembly, please contact the Division of External Relations, Room 173, Education Building, Raleigh, NC 27603-1712 (919/733-3850).

Bob Etheridge
State Superintendent

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Education Budget-Reductions

BUDGET REDUCTIONS--Department of Public Instruction	
Reductions in department budget	($1,657,231)
Reductions in salary reserve funds	(93,466)
Sub-total Reductions--Public Instruction	(1,750,697)
BUDGET REDUCTIONS--Public School Fund	
Adjustments in Fund--Reduction due to adjustments in average daily membership and average teacher salary	(8,653,661)
Career Development--Reduce 16 career development pilot systems	(4,693,368)
School Bus Replacement--Delay purchase of school buses for one year except for pre-1977 bus replacement and emergency reserve	(22,500,000)
Basic Education Program--Defer some portions of the Basic Education Program	(71,510,760)
Student Transportation--Reduce budget by 5 percent due to lower fuel costs and improved efficiency	(5,500,000)
Tort Claims--Reduce budget because of lower claims experience	(2,000,000)
Prospective Teacher Scholarship Loan--Reduce budget by anticipated repayments received	(500,000)
Sub-total Reductions--Public School Fund	(115,357,789)
TOTAL REDUCTIONS-- Public Instruction and Public School Fund	**($117,108,486)**

Management Flexibility Reductions

Department of Public Instruction	(842,828)
Public School Fund	(45,000,000)

Education Budget-Expansion

EXPANSION BUDGET--Department of Public Instruction	
Drug Prevention Programs	
Phase one of the expansion and development of K-6 curriculum on drug and alcohol prevention education programs	$97,850
K-12 drug and alcohol prevention as a part of the BEP	400,000
Grades 7-12 education program on effects of drugs on a developing fetus	250,000
Evaluations of drug prevention programs	250,000
Expansion of D.A.R.E. into all 5th and 6th grade classes (5 positions)	300,264
Implement eight student assistance programs	468,680
Implement and evaluate eight Peer Self-Help programs	450,000
Sub-total Expansion-Public Instruction	2,216,794
EXPANSION BUDGET--Public School Fund	
Senate Bill 2-Full funding for Senate Bill 2 in FY 1990-91	39,436,046
Handicapped Children, Ages 3 and 4	3,680,960
Sub-total Expansion-Public School Fund	43,117,006
TOTAL EXPANSION ITEMS-Public Instruction and Public School Fund	**$45,333,800**
Additional Items Contained in Senate Bill 1427-Capital Appropriations	
Purchase of 100 school buses	**$3,000,000**
Additional support for exceptional children	**$2,000,000**
***Public School Construction Funds**	
ADM fund allocations	**$36,500,000**
Critical Needs allocations	**$10,000,000**

*Represents one-year change in funding from nonrecurring sources.

Special Provisions-Senate Bill 1426, Current Operations

GENERAL PROVISIONS

Sec. 7, Negative Reserves/Management Flexibility--Requires each state department, institution and agency and the public schools to give the highest priority to not filling vacancies in positions that have never been filled or those caused by resignation or retirement, unless the Governor has determined that there is a critical need to fill the vacancies. This does not apply to any teaching position with classroom responsibilities in the public schools.

DEPARTMENT OF REVENUE

Sec. 28, School Capital Funding from Nonrecurring Funds--Provides that funding for the Public School Building Capital Fund and the Critical School Facility Needs Fund will be appropriated from nonrecurring revenue for 1990-91 only.

DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT

Sec. 58, Worker Training Trust Fund--Appropriates $250,000 from the Worker Training Trust Fund to the Department of Public Education to establish five new Tech Prep programs in the public schools.

DEPARTMENT OF HUMAN RESOURCES

Sec. 64, Willie M. Reporting Change--Requires that a joint report on the progress achieved in serving members of the Willie M. Class be submitted by the Departments of Human Resources and Public Instruction.

COLLEGES AND UNIVERSITIES

Sec. 85, Higher Education Opportunity Study--Establishes a 19-member commission to study the issue of providing grants for tuition and fees to be awarded to North Carolina students who have the academic ability but lack the financial resources to attend a four-year institution of higher education.

COMMUNITY COLLEGES

Sec. 89, "Tech Prep" Implementation--The Departments of Public Education and Community Colleges shall each allocate $50,000 to the N.C. Tech Prep Leadership Development Center.

PUBLIC SCHOOLS

Sec. 92, Small School Program Allotments--Allows the State Board of Education to allot teaching and other positions to local school systems to allow the local systems to place personnel in private hospitals and treatment facilities to provide education to students confined to those institutions.

Sec. 93, Leave Accumulation/Public School Employees--Changes the dates that leave is calculated from January 1-December 31 to July 1-June 30 for superintendents and 12-month employees other than supervisors and classified principals.

Sec. 95, Prospective Teacher Scholarship Loan Program/Expanded to Cover Additional Certified Employees--Allows Prospective Teacher Scholarship Loans to be made to applicants based on entry level degree.

Sec. 96, School TransportationBudget Reduction/Implementation--Requires all local boards of education to implement the Transportation Information Management System by July 1, 1992. Requires local superintendents to prepare local school transportation plan.

Sec. 97, Career Development Program Transition--Reduces the appropriation for career development pilot units by $4,693,368 in 1990-91 and states the intent to reduce appropriations by equal increments over the 1991-92, 1992-93 and 1993-94 fiscal years. Stipulates that no teacher in a pilot unit will receive

less in salary and state-funded bonus or supplement than teacher received during prior school year so long as teacher qualifies for bonus or supplement.

Sec. 98, Basic Education Funds--Appropriates $44,496,768 for BEP in 1990-91. Requires that $12,925,543 of this amount shall be used to reduce class size in grades 10-12. Requires the State Board of Education to use up to $100,000 of aid to local school systems for the model teacher education consortium established in 1989-90.

Sec. 99, Completion of Basic Education Program--Establishes a 23-member Legislative Study Commission on the BEP. Extends the implementation of the BEP by two years to July 1, 1995.

Sec. 101, Teaching Fellows Fund Uses--Forgives loans because of death or permanent disability of recipient. Allows revolving fund to be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments with prior approval of General Assembly.

Sec. 102, DPI Grant Funds--Allows State Superintendent to create a special fund within the Department of Public Instruction to manage funds received as grants from non-governmental sources in support of public education.

Sec. 103, Eliminate Education Reports--Deletes submission of annual reports on Career Development Plan, staff development and use of BEP funds for expanded curricular offerings.

Sec. 104, Child Nutrition Staff Development--Allocates $280,000 of staff development funds to be used for staff development of school food service personnel.

Sec. 105, Uniform Education Reporting System Funds--Requires the Department of Public Education to reimburse 13 school systems for expenses incurred in converting to AS/400 equipment.

Sec. 106, Limit Uniform Education Reporting System Fines--Limits the amount of money to $25,000 that may be withheld from a school system.

Sec. 107, Differentiated Pay Funds Allocation--Extends pay increments for differentiated pay plans under Senate Bill 2 by including a 5 1/2 percent increment in 1993-94 between the 4 percent increment in 1992-93 and the 7 percent increment in 1994-95. Limits the payment of bonuses or supplements to once every calendar quarter except for career development pilot units where such payments can be made monthly prior to the 1994-95 school year.

Sec. 108, Study of Noncertified Employees' Salaries--Requires the State Board and the Superintendent to report to the 1991 General Assembly on the disposition of the 2 percent salary reserve funds for noncertified public school employees and to make recommendations regarding groups in need of salary increases.

Sec. 109, Sampson School Funds/Deadline Extended--Allows the $2 million awarded to Sampson County from the Critical School Facility Needs Fund to remain available until Dec. 1, 1991.

Sec. 110, School Psychologist Salary Reclassification--Requires the Department of Public Education to use $800,000 of the funds appropriated for fiscal year 1990-91 to be used for a salary reclassification for school psychologists.

Sec. 111, National Conference on Governor's Schools--Allows the Department of Public Education to use, if necessary, $20,000 of the funds appropriated for 1990-91 to provide support to conduct the National Conference on Governor's Schools.

Sec. 112, North Carolina Geographic Alliance Network Funds--Allows the Department of Public Education to use up to $50,000 to fund the N.C. Geographic Alliance Network Program at East Carolina University.

Sec. 113, Class Size Waivers/Teacher Positions--Requires the Department of Public Instruction to report to the General Assembly class size waivers granted under Senate Bill 2 and the conversion of teaching positions.

Sec. 114, Cities-In-Schools Contract Authorization--Allows the Department of Public Education to contract with Cities-In-Schools Dropout Prevention Program.

Sec. 115, Joint Legislative Education Oversight Committee--Establishes a 16-member legislative committee to examine, on a continuing basis, education from kindergarten through higher education and to make interim reports to the General Assembly.

Sec. 116, Public School Teachers/Liability Protection--Requires the State Board of Education to allocate from funds appropriated in 1990-91 $5 per state-paid teacher to school systems to provide liability protection for teachers.

DEPARTMENT OF CORRECTION

Sec. 120, Gates County School Wastewater Treatment--Allows the wastewater treatment systems of Gates County Junior High School and Gates County Senior High School to be tied in to the wastewater treatment center of Gates County Correctional Center.

DEPARTMENT OF TRANSPORTATION

Sec. 144, Driver Training Program Funding from Highway Fund with Reimbursement to Highway Fund from Highway Trust Fund--Transfers $17 million from the Highway Fund to the State Treasurer to partially offset the cost of the driver training program.

Sec. 145, LRC Study on Drivers' Education--Allows the Legislative Research Commission to study the driver education program with a view to promote the program's efficiency, modify its funding and, if possible, reduce the cost.

Special Provisions--Senate Bill 1427, Capital Appropriations

GENERAL GOVERNMENT

Sec. 17, Charges for Overdraft in State Treasurer's Disbursing Account--Allows the State Treasurer to impose a fee of $15 for each check drawn against a disbursing account that causes a balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from nonstate or personal funds to the General Fund.

EDUCATION

Sec. 23, School Supplemental Instructional Material/Differentiated Pay Plans--Provides that local boards of education shall have sole authority to select supplemental instructional materials, including those with commercial advertising. Also, this provision states that the local board of education shall make a determination of which certified staff members shall receive differentiated pay as designated in local differentiated pay plans. Requires the State Board to study the use of supplementary materials that contain commercial advertising and report the results of the study to the General Assembly.

Sec. 24, Parental Involvement in Schools/Study--Authorizes the Education Study Committee to review the concept of requiring parents to spend time at school with their children.

Sec. 25, School Administrator Salary Schedule--Provides for a 6 percent salary increase for all superintendents, assistant/associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals and assistant principals whose salaries are supported from the General Fund.

Sec. 26, Education Governance Study--Directs the Task Force on Excellence in Secondary Education to study the method of selecting education officials and the educational governance structure at the state level and report to the General Assembly prior to Jan. 15, 1991.

Sec. 27, Year-Round Education--Requires the State Board of Education to study the concept of year-round education and to develop policies and procedures for school systems that want to implement year-round education.

Sec. 28, Public School Testing Funds--Allows the State Board of Education to allocate $375,000 from aid to local school systems to implement and administer end-of-course tests in physical sciences and English II (essay) and to develop end-of-grade tests for grades 3-8.

Special Provision-House Bill 296, 1990 Studies

Part VII, SCHOOL IMPROVEMENT ACT STUDY

Sec. 7--Authorizes the Education Study Commission to study methods of increasing involvement of parents and teachers in developing local school improvement plans under the Performance-Based Accountability Program and of increasing the involvement of teachers in approving such plans.

SB 382: SUMMER INTERN USE EXPANDED

Expands the number of summer interns to provide interns to the Department of Community Colleges, the Office of State Personnel, and the Office of the Senate President Pro Tempore.
Effective July 13, 1990.
Ratified 7/13/90.

SB 463: ATHLETE AGENTS REGULATED

Regulates the profession of athlete agents who, for compensation, directly or indirectly recruit or solicit an athlete to enter into a contract or who, for a fee, procure, offer, or attempt to obtain employment for an athlete with a professional sports team. Includes in the definition of athlete an individual who is enrolled in a high school in the state or has been admitted to an institution of higher education in the state.

Requires athlete agents to register with the Secretary of State and to deposit a surety bond of $100,000 if the agent enters into a financial services contract with an athlete. Allows the athlete to cancel an agent contract or financial services contract not later than 16 days after the contract has been signed.

Prohibits athlete agents from entering into any agreement in which the agent offers anything of value to an employee of a high school or institution of higher education in return for the referral of any clients by that employee. Requires athlete agents to give prior written notice of their intent to contact an athlete with respect to representation of the athlete as an agent, to the principal of the high school or to the director of the institution of higher education.
Effective September 1, 1990.
Ratified 7/9/90.

SB 1345: MERIT PAY CHANGES

Establishes a five-level performance appraisal system, with the top two levels qualifying for performance increases. Presumes a five-level system to be the most appropriate.

Allows standards for performance and performance pay increases to be established by departments.

Requires supervisor to give written justification of awarding an increase above or below the mid-range value when requested by employee.

Allows an employee at the top of (but not exceeding) a pay scale to receive a performance increase in the form of a one-time, lump sum award.

Clarifies that a reduction in pay or position that is not imposed for disciplinary reasons shall not be considered a disciplinary action.

Specifies that for the purposes of contested case hearings, an involuntary separation (such as separation due to reduction in force) shall be treated as if it were a disciplinary action.

Gives Personnel Commission authority to review Administrative Law Judge's recommended decision and to make final decision.
Effective upon ratification.
Ratified 7/27/90.

SB 1402: PERFORMANCE PAY OVERSIGHT

Requires each department to establish a performance management and pay advisory committee. Gives committee authority to review performance pay policies; training and education programs; and performance ratings within the department.

Requires minimum of five members with equal representation of nonsupervisory, supervisory, and management employees.

Requires at least two meetings a year with a written report to follow each meeting.

Effective July 1, 1990.

Ratified 7/27/90.

SB 1598: RETIREE'S INCREASE

Increases the service retirement allowance for beneficiaries of the Teachers' and State Employees' Retirement System from 1.63 percent to 1.64 percent effective for those persons retiring on or after July 1, 1990.

Provides a 6.1 percent across-the-board increase to all retirees whose retirement began on or before July 1, 1989 and a prorated increase to those who retired after July 1, 1989, but before June 30, 1990.

Also increases service retirement allowance and across-the-board increases for members of the judicial, law enforcement, and legislative retirement systems.

Effective July 1, 1990.

Ratified 7/28/90.

SB 1615: PANEL/ DUE PROCESS HEARING

Changes the appeals process for exceptional children.

Provides that the Administrative Law Judge shall make a decision regarding a parent's, guardian's or surrogate's right of review of proposed decisions on the following grounds: 1) child has not been identified or has been incorrectly identified as a child with special needs; 2) child's individualized education plan is not appropriate; and 3) child is being denied a free appropriate education.

Provides that a local education agency may obtain a review if a parent, guardian or surrogate parent refuses to consent to the evaluation of the child for purposes of determining whether the child is a child with special needs.

Provides that the decision of the administrative law judge is final and is not subject to further review unless appealed.

Provides that the decision of the administrative law judge may be appealed within 30 days after receipt of notice of the decision.

Provides that the decision may be appealed to a review officer appointed by the State Superintendent of Public Instruction from a pool of review officers approved by the State Board of Education.

Requires the review officer to be an educator or other professional who is knowledgeable about special education and who possesses such other qualifications as may be established by State Board of Education.

Disallows an employee or official of the State Board of Education or local board of education from being appointed as a review officer.

Gives the State Board of Education the power to enforce the final decision of the administrative law judge or the final decision of the review officer if the decision is appealed.

Effective October 1, 1990.

Ratified 7/28/90.

HB 267: FELONY TO HIRE CHILD PUSHERS

(Former title: Drug Free School Zone)

Makes it a felony for a person at least 18 years old but less than 21 years of age to hire a minor (an individual who is less than 18 years of age) to commit a drug violation.

Provides that a person 21 years of age who commits a drug offense on school property or within 300 feet of the boundary of a school is guilty of a Class E felony.

Provides that a person who hires a minor to commit a drug violation is civilly liable for damages for drug addiction proximately caused by the violation.

Increases the sentence for the illegal sale or delivery of drugs to a minor or a pregnant woman.
Effective Oct. 1, 1990.
Ratified 7/28/90.

HB 416: WIPERS ON/HEADLIGHTS ON

Repeals the requirement that headlamps and rear lamps must be illuminated when the lack of visibility through the windshield requires the windshield wipers to be activated, and the vehicle is within a school zone during the regular school hours of the school year.

Requires headlights to be illuminated at any time when windshield wipers are in use as a result of certain environmental factors or when inclement weather or environmental factors severely reduce the ability to see at a distance of 500 feet ahead.

Requires the Superintendent of Public Instruction and the Commissioner of Motor Vehicles to incorporate into the drivers' education program and the drivers' licensing program respectively instruction designed to encourage compliance with this new law as a means of reducing accidents.

Establishes a fine of five dollars ($5) for persons who commit this infraction, but allows a period (October 1, 1990 through June 28, 1991) when persons violating this new law will be given only a warning of the violation.
Effective Oct. 1, 1990.
Ratified 6/28/90.

HB 1241: UNC IN-STATE ADMISSIONS

Clarifies the admissions status of persons eligible for in-state tuition at the University of North Carolina.

Requires a person to be enrolled in a high school located in North Carolina or enrolled in a General Education Development (GED) program in an institution located in this state, at the time of seeking admission, in order to be considered eligible for in-state tuition.
Effective upon ratification.
Ratified 7/13/90.

HB 1314: FLEXIBLE BENEFIT PLANS

Authorizes the State Board of Education to provide a plan of flexible compensation to eligible employees of local school administrative units.

Provides that such a plan shall not include benefits currently available to public school employees such as retirement, medical and disability benefits, nor can it cover vacation leave, sick leave or any other leave that may be carried forward from year to year by employees as a form of deferred compensation.

Authorizes flexible compensation plans for state agency employees, university employees, and community college employees also.
Effective January 1, 1991.
Ratified 7/28/90.

HB 1679: HANDICAPPED EDUCATION AGE CHANGE

Provides early intervention, developmental services and education to handicapped children from birth to 5 years of age.

Provisions pertaining to public education are as follows:

Provides that the term "preschool handicapped children" means all handicapped children who meet the following criteria:

a) have reached their third birthday and parents have requested services from the public schools;
b) are not eligible to enroll in public kindergarten; and

c) need special education and related services because of permanent or temporary mental, physical or emotional handicaps. (This term includes children who are mentally retarded, learning disabled, seriously emotionally disturbed, autistic, cerebral palsied, orthopedically impaired, hearing impaired, speech impaired, blind or visually impaired, multiply handicapped, or other health impaired.)

Provides that preschool handicapped children are entitled to individualized programs specifically designed to meet their unique needs at no cost to their parents or guardians.

Requires the Department of Public Education to cause local school administrative units to make available special education and related services to all preschool handicapped children with special needs when such education and services have been requested by children's parents or guardians.

Requires the State Board of Education to adopt rules implementing the act.

Provides that the rules shall include a provision that where a local education agency finds that appropriate services are available from other public agencies or private organizations, the local education agency shall contract for these services rather than provide them directly.

Specifies that state funds provided to implement this act shall be used to supplement and not supplant existing federal, state and local funds.

Effective date for the public education section of this act is July 1, 1991.

Ratified 7/20/90.

HB 2335: UNC MANAGEMENT FLEXIBILITY

Raises the legal limit for competitive bidding from $5,000 to $10,000.

Provisions specifically related to public schools are as follows:

Requires the Board of Governors of the University of North Carolina to adopt standards to create and enhance an organized program of public service and technical assistance to the public schools.

Provides that the program shall (1) make accessible to public schools consultation and advice from members of the faculties of the constituent institutions; (2) facilitate and encourage research in the public schools and the application of the results of the research; (3) link education faculties of the constituent institutions with public school teachers and administrators through public service requirements; and (4) create partnerships among all constituent institutions and public schools that could benefit from such partnerships.

Effective July 1, 1990.

Ratified 7/16/90.

Appendix

15

Reports, Studies and Commissions Requested in Senate Bill 1426

Sec. 64, Willie M. Reporting Change--Requires the Departments of Public Education and Human Resources to submit by May 1, 1991, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class.

Sec. 85, Higher Education Opportunity Study--Establishes a 19-member commission to study the issue of providing grants for tuition and fees to be awarded to North Carolina students who have the academic ability but lack the financial resources to attend a four-year institution of higher education.

Sec. 96, School Transportation Budget Reduction/Implementation--Requires Department of Public Instruction to report to Governmental Operations Commission by Dec. 1, 1990, on efforts to lower fuel costs and improve efficiency in the student transportation system.

Sec. 99, Completion of Basic Education Program--Establishes a 23-member Legislative Study Commission on the Basic Education Program to study how the program has been implemented to date and what effect it has had on educational achievement throughout the state. Specifies that the initial report is to be made to the Joint Legislative Oversight Commission prior to Feb. 15, 1991. The Commission will make the final report to the General Assembly on or before March 31, 1991.

Sec. 108, Study of Noncertified Employees' Salaries--Requires the SBE and the Superintendent to report to the 1991 General Assembly on the disposition of the 2 percent salary reserve funds for non-certified public school employees and to make recommendations regarding groups in need of salary increases.

Sec. 113, Class Size Waivers/Teacher Positions--Requires the Department of Public Instruction to report to the General Assembly class size waivers granted under Senate Bill 2 and the conversion of teaching positions.

Sec. 115, Joint Legislative Education Oversight Committee--Establishes a 16-member legislative committee to examine, on a continuing basis, education from kindergarten through higher education and to make interim reports to the General Assembly.

Sec. 145, LRC Study on Drivers' Education--Allows the Legislative Research Commission to study the drivers' education program with a view to promote the program's efficiency, modify its funding and, if possible, reduce the cost. The report is to be made to the 1991 General Assembly.

Studies Requested in Senate Bill 1427

Sec. 23, School Supplemental Instructional Material/Differentiated Pay Plans--Subsection (d) Requires the State Board of Education to study the use of supplementary materials that contain commercial advertising and the impact of these materials on the instructional program and to report the results of the study to the General Assembly prior to March 15, 1991.

Sec. 24, Parental Involvement in Schools/Study--Authorizes the Education Study Committee to study the concept of requiring parents to spend time at school with their children.

Sec. 26, Education Governance Study--Requires the Task Force on Excellence in Secondary Education to study the method of selecting education officials and the educational governance structure at the state level and report to the General Assembly prior to Jan. 15, 1991.

Sec. 27, Year-Round Education--Requires the State Board of Education to study the concept of year-

round education and to develop policies and procedures for school systems that want to implement year-round education. The results and any policies and procedures must be reported to the General Assembly prior to Jan. 30, 1991. (Convening date for the 1991 General Assembly)

Study Requested in House Bill 296

Part VII., School Improvement Act Study--Allows the Education Study Commission to study methods of increasing involvement of parents and teachers in developing local school improvement plans and increasing the involvement of teachers in approving such plans.

Requested by: Senator Royall, Representative Diamont
-----NEGATIVE RESERVES/MANAGEMENT FLEXIBILITY

Sec. 7. (a)(1) To achieve the negative reserves set out in this act, each State department, institution, and agency and the public schools shall give highest priority to leaving positions vacant pursuant to subdivision (a)(2) of this subsection.

(2) The Office of State Budget and Management shall manage quarterly allotments so as to maximize savings from the General Fund for fiscal year 1990-91 by not filling vacancies (i) in positions that have never been filled or (ii) caused by resignation or retirement, unless the Governor has determined that there is a critical need to fill the vacancies. These actions shall result in savings of at least $40,000,000 from the General Fund for the 1990-91 fiscal year.

The Office of State Budget and Management shall make every effort to allocate the freeze equitably based on the vacant position report used by the Senate Appropriations Committee in selecting this reduction and, at the same time, protecting critical vacant positions needed in the State's institutions and prisons.

This subdivision applies to State government and to State-funded positions in the public school system, but it does not apply (i) to the employees of the Senate, the House of Representatives, or the Legislative Services Office, or (ii) to any teaching position with classroom responsibilities in the public school system, in The University of North Carolina system, in the Correctional System, or in the Department of Human Resources.

(b)(1) To the extent the Director of the Budget finds that actions taken pursuant to the subsection (a) of this section are not adequate to achieve the negative reserves set out in this act, the budget flexibility provisions set out in this subsection shall apply.

(2) G.S. 143-27 reads as rewritten:

"**§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.**

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and ~~agencies; Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.~~

~~The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund.~~ agencies."

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(3) G.S. 143-23(a1) reads as rewritten:

"(a1) No transfers may be made between line items in the budget of any department, institution, or other spending agency; however, with the approval of the Director of the Budget, a department, institution, or other spending agency may spend more than was appropriated for a line item if the overexpenditure is:

(1) In a program for which funds were appropriated for that fiscal period and the total amount spent for the program is no more than was appropriated for the program for the fiscal period;

(2) Required to continue a program because of unforeseen events, so long as the scope of the program is not increased;

(3) Required by a court, Industrial Commission, or administrative hearing officer's order or award or to match unanticipated federal funds;

(4) Required to respond to an unanticipated disaster such as a fire, hurricane, or tornado; or

(5) Required to call out the National Guard.

The Director of the Budget shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office the reason if the amount expended for a program is more than the amount appropriated for it from all sources.

~~Funds appropriated for salaries and wages may only be used for salaries and wages or for premium pay, overtime pay, longevity, unemployment compensation, workers' compensation, temporary wages, contracted personal services, moving expenses, payment of accumulated annual leave, certain awards to employees, tort claims, and employer's social security, retirement, and hospitalization payments: provided, however, funds appropriated for salaries and wages may also be used for purposes for which over expenditures are permitted by subdivisions (3), (4), and (5) of this subsection but the Director of the Budget shall include such use and the reason for it in his quarterly report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office.~~ Lapsed salary funds that become available from vacant positions may not be used for new permanent employee positions or to raise the salary of existing employees.

As used in this subsection, 'program' means a group of expenditure and receipt line items for support of a specific budgeted activity outlined in the certified budget for each department, agency, or institution, as designated by the four-digit fund (purpose) number in the Budget Preparation System.

The requirements in this section that the Director of the Budget report to the Joint Legislative Commission on Governmental Operations shall not apply to expenditures of receipts by entities that are wholly receipt supported, except for entities supported by the Wildlife Resources Fund."

(c) The Office of State Budget and Management shall provide a quarterly report to each member of the General Assembly and to the Joint Legislative Commission on Governmental Operations and a monthly report to the Fiscal Research Division on budgetary actions taken pursuant to this section. The Office of State Budget and Management shall also report to the appropriations committees of the Senate and the House of Representatives prior to March 15, 1991, on budgetary actions taken through February 28, 1991, pursuant to this section and any other such actions anticipated during the 1990-91 fiscal year.

The March 15, 1991, report shall include vacant positions identified statewide that would result in $40,000,000 of annualized savings should these positions be eliminated.

(d) All reductions achieved pursuant to the provisions of this section shall be temporary unless they are made permanent by the General Assembly.

(e) The Governor shall submit to the General Assembly with his proposed budget for the 1991-93 fiscal biennium a report of which items in the

proposed budget are continuations of budget reductions achieved pursuant to the provisions of this section.

(f) This section shall not be construed to permit the creation of any new programs not authorized by the General Assembly or the elimination of any programs for which the appropriations committees of the Senate or the House of Representatives considered cuts that were not enacted for the 1990-91 fiscal year.

(g) This section shall become effective July 1, 1990, and shall expire June 30, 1991. Subdivisions (b)(2) and (b)(3) of this section shall become effective only to the extent the Director of the Budget finds necessary to achieve the reductions set out as "Reserves - Negative Appropriations" in the appropriations for each department.

Sec. 8. Section 48 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 48. Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, and G.S. 143-16.3, do not apply to the extent that the Director of the Budget finds that compliance is impossible and that deviation is necessary because of complications in the budget process that were not contemplated when the budget for the 1989-91 fiscal biennium was enacted.

The Director of the Budget shall report, on a monthly basis to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office on any deviations from Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, and G.S. 143-16.3, and the reasons it was impossible to comply.

This section does not authorize deviations from Sections 156 through 160 of Chapter 479 of the 1985 Session Laws, as amended, and G.S. 143-16.3, to combine fund codes."

Sec. 9. (a) The Department of Environment, Health, and Natural Resources shall use funds available within its budget for the 1990-91 fiscal year for current operations to provide funds for programs according to the following schedule:

	Program	Amount
1.	Health Aid to Counties	$289,407
2.	Communicable Disease - Vaccines	109,232
3.	Tuberculosis Control	200,689
4.	Environmental Epidemiology	16,990
5.	Vital Records	22,279
6.	Environmental Health Aid to Counties	324,667
7.	Mosquito Aid to Counties	100,000
8.	Adult Health Care	274,814
9.	Epilepsy Contracts	9,439
10.	Adult Health Promotion	134,927
11.	Hypertension Program	20,373
12.	Arthritis Program	6,249
13.	Genetic Screening Contracts	200,000
14.	Adolescent Pregnancy Prevention Program	120,000

(b) The negative reserve for the Department of Environment, Health, and Natural Resources in Section 3 of this act has been reduced by the total amount of expenditures required by subsection (a) of this section. The expenditures required by subsection (a) of this section are not subject to the budget flexibility authorized in Section 7 of this act.

Requested by: Senator Royall

-----SCHOOL CAPITAL FUNDING FROM NONRECURRING FUNDS

Sec. 28. (a) It is the intent of the General Assembly that funding for the Public School Building Capital Fund and the Critical School Facility Needs Fund shall not be reduced but shall be appropriated for the 1990-91 fiscal year from nonrecurring revenue in the same manner as funding for other capital projects. The Public School Building Capital Fund and the Critical School Facility Needs Fund shall have first priority, ahead of all other capital projects, for nonrecurring revenue.

(b) G.S. 115C-546.1 reads as rewritten:

"**§ 115C-546.1. Creation of Fund; administration.**

(a) There is created the Public School Building Capital Fund. The Fund shall be used to assist county governments in meeting their public school building capital needs.

(b) ~~Beginning October 1, 1987, and each month thereafter through July 31, 1988, the Secretary of Revenue shall deposit with the State Treasurer in the Public School Building Capital Fund one-seventh (1/7) of the corporate income tax net collections received during the previous month by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes. Beginning July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Public School Building Capital Fund an amount equal to two million five hundred thousand dollars ($2,500,000) less than one-fourteenth (1/14) of the corporate income tax net collections received during the previous quarter by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes.~~ All funds deposited in the Public School Building Capital Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the Office of State Budget and Management."

(c) G.S. 115C-489.1(b) reads as rewritten:

"**§ 115C-489.1. Creation of fund; administration.**

(a) There is created the Critical School Facility Needs Fund.

(b) ~~On or before January 15, 1988, the Secretary of Revenue shall estimate the amount of additional tax revenue that will be collected during the twelve months ending June 30, 1988, as a result of Section 9 of the School Facilities Finance Act of 1987. The Secretary shall, prior to February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund, an amount equal to that estimate. These funds shall be drawn from individual income tax net collections received by the Department of Revenue under Division II of Article 4 of Chapter 105 of the General Statutes.~~

~~The Secretary of Revenue shall, on or before February 1, 1988, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of forty million dollars ($40,000,000). These funds shall be drawn from sales and use tax net collections received by the Department of Revenue under Article 5 of Chapter 105 of the General Statutes.~~

~~Effective July 1, 1988, the Secretary of Revenue shall, on a quarterly basis, deposit with the State Treasurer in the Critical School Facility Needs Fund the sum of two million five hundred thousand dollars ($2,500,000). These funds shall be drawn from the corporate income tax collections received by the Department of Revenue under Division I of Article 4 of Chapter 105 of the General Statutes.~~

All funds deposited in the Critical School Facility Needs Fund shall be invested as provided in G.S. 147-69.2 and G.S. 147-69.3.

(c) The Fund shall be administered by the State Board of Education. Monies in the Fund shall be used only for the purposes specified in this Article."

(d) This section shall become effective July 1, 1990, and shall expire June 30, 1991.

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Requested by: Senator Martin of Pitt, Representatives G. Wilson, Redwine, B. Ethridge

-----WORKER TRAINING TRUST FUND

Sec. 58. (a) Section 149 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 149. (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of $1,200,000 for the 1989-90 fiscal year ~~and the sum of $1,200,000 for the 1990-91 fiscal year~~ for a Worker Readjustment Program to provide a statewide program of rapid response to plant closings. Funds appropriated by this section for the 1989-90 fiscal year but not spent or encumbered by June 30, 1990, shall be reallocated to the North Carolina Department of Economic and Community Development for the 1990-91 fiscal year for a State job training program to be administered through the Job Training Partnership Act system and aimed at the unemployed and the working poor.

(b) The Employment Security Commission shall report quarterly to the Joint Legislative Commission on Governmental ~~Operations by the first of each month prior to the expenditure of any funds appropriated by this section.~~ Operations. The report required by this subsection may be included in any other report that the Employment Security Commission is required to make to the Joint Legislative Commission on Governmental Operations.

(c) The Employment Security Commission shall use supplemental federal funds or other additional funds received by the Employment Security Commission for similar purposes before expending funds appropriated by this section."

(b) Section 111 of Chapter 500 of the 1989 Session Laws reads as rewritten:

"Sec. 111. (a) There is appropriated from the Worker Training Trust Fund to the Employment Security Commission of North Carolina the sum of four million five hundred thirty-seven thousand seven hundred eight dollars ($4,537,708) for the 1989-90 fiscal year and the sum of ~~four million five hundred thirty-seven thousand seven hundred eight dollars ($4,537,708)~~ five million dollars ($5,000,000) for the 1990-91 fiscal year for the operation of local offices at the 1986-87 level of service.

(b) Notwithstanding G.S. 96-5(c), there is appropriated from the Special Employment Security Administration Fund to the Employment Security Commission of North Carolina, the sum of one million dollars ($1,000,000) for the 1989-90 fiscal year and the sum of ~~one million dollars ($1,000,000)~~ two million dollars ($2,000,000) for the 1990-91 fiscal year for administration of the Veterans Employment Program, Employment Services Program, and Unemployment Insurance Program.

(c) Beginning October 1, 1989, the Employment Security Commission shall report to the Appropriations Committee on Natural and Economic Resources and the Joint Legislative Commission on Governmental Operations ~~by the first of each month, prior to the expenditure of any funds appropriated by this section.~~ on a quarterly basis. Supplemental federal funds or other additional funds received by the Employment Security Commission for similar purposes shall be expended prior to the expenditure of funds appropriated by this section."

(c) Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the following agencies the following sums for the 1990-91 fiscal year for the following purposes:

(1) The sum of $2,000,000, less the sum reallocated in subsection (a) of this section, to the North Carolina Department of Economic and Community Development for a State job training program to be administered through the Job Training Partnership Act system aimed at the unemployed and the working poor.

(2) The sum of $250,000 to the North Carolina Department of Public Education for local implementation grants to establish five new Tech Prep programs in the public schools. These grants shall be

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provided to local school units that have a plan meeting the standards of the State Board of Education and the State Board of Community Colleges.

(3) The sum of $500,000 to the North Carolina Department of Labor for customized training of the unemployed and the working poor for specific jobs needed by employers through the Department's Pre-Apprenticeship Division.

(4) The sum of $2,000,000 to the North Carolina Department of Human Resources to assist welfare recipients in gaining employment through the federally funded Job Opportunities and Basic Skills program in such a way as to gain the maximum match of federal funds for the State dollars appropriated.

(d) Beginning October 1, 1990, each of the departments receiving funds pursuant to subsection (c) of this section shall report on a quarterly basis to the Joint Legislative Commission on Governmental Operations on the use of these funds.

(e) Notwithstanding the provisions of G.S. 96-5(f), there is appropriated from the Worker Training Trust Fund to the Employment Security Commission for the 1990-91 fiscal year the sum of $1,459,673 for operation of local offices.

(f) Subsection (e) of this section shall become effective October 1, 1990.

Requested by: Senator Walker, Representative Gardner

-----WILLIE M. REPORTING CHANGE

Sec. 64. Section 82(e) of Chapter 500 of the 1989 Session Laws reads as rewritten.

"(e) Reporting Requirements. The Department of Human Resources and the Department of Public Education shall submit, by May 1, ~~1990,~~ 1991, a joint report to the Governor and the General Assembly on the progress achieved in serving members of the Willie M. Class. The report shall include the following unduplicated data for each county: (i) the number of children nominated for the Willie M. Class; (ii) the number of children actually identified as members of the Class in each county; (iii) the number of children served as members of the Class in each county; (iv) the number of children who remain unserved; (v) the types and locations of treatment and education services provided to Class members; (vi) the cost of services, by type, to members of the Class; (vii) information on the impact of treatment and education services on members of the Class."

Requested by: Senator Ward, Representatives Rhyne, Tart

-----HIGHER EDUCATION OPPORTUNITY STUDY

Sec. 85. (a) The Legislative Research Commission may study the issue of higher education opportunity. The Chairmen shall consider appointing the members of the Committee as follows:

(1) The Superintendent of Public Instruction, or his designee;
(2) The Chairman of the State Board of Education, or his designee;
(3) The President of the Community College System, or his designee;
(4) The President of The University of North Carolina, or his designee;
(5) The Chairman of the Association of Independent Colleges and Universities, or his designee;
(6) Fifteen members appointed as follows:
  a. Five members appointed upon the recommendation of the Governor;
  b. Five members appointed from the House of Representatives; and
  c. Five members appointed from the Senate.

(b) The Committee shall study the issue of providing tuition and fees grants for higher education to North Carolina students of proven academic ability who lack the necessary financial resources otherwise to attend a public four-year institution of higher education. The Committee shall report the results of this examination, including any legislative and appropriations recommendations, to the Legislative Research Commission for transmittal to the 1991 General Assembly.

(c) The Committee's study shall include:

(1) An analysis of Louisiana's, and other states', initiatives in providing financial opportunity for higher education to their students of proven academic ability;
(2) An analysis of the costs and future savings involved in providing such opportunity for North Carolina students;
(3) A determination of what specific residence criteria, other than those currently being used by The University of North Carolina, if any, would need to be employed;
(4) A determination of what academic standards eligible students would need to prove they have met, including high school course requirements, and standardized test scores;
(5) A determination of what financial needs tests the students and their families must meet in order to qualify;
(6) A determination of whether to allow a percentage deviation from the set standards for a certain number of students receiving financial help under this program;
(7) A determination of what, if any, additional criteria students attending constituent institutions of higher education under this program must continue to meet to continue to receive financial aid under this program;
(8) A determination of what entity should administer this program, whether the Board of Governors of The University of North Carolina, the State Education Assistance Authority, or other entity; and
(9) Any additional determination or examination the Education Study Commission considers necessary to carry out its mandate.

(d) The University of North Carolina and the Department of Public

Instruction shall cooperate with the Legislative Research Commission Higher Education Opportunity Study Committee as it carries out the mandate established in this act.

(e) Of the funds appropriated to the General Assembly for the 1990-91 fiscal year, the sum of $20,000 may be allocated to the Legislative Research Commission for its work.

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----"TECH PREP" IMPLEMENTATION

Sec. 89. Of the funds available to the Department of Public Education for vocational education in the 1990-91 fiscal year, the sum of $50,000 shall be allocated to the North Carolina Tech Prep Leadership Development Center at Richmond Community College for assistance to local education agencies and community colleges in planning and implementing "Tech Prep" across the State. The Department of Community Colleges shall allocate $50,000 from funds available to it for the 1990-91 fiscal year for the North Carolina "Tech Prep" Leadership Development Center at Richmond Community College.

PART XIX.-----PUBLIC SCHOOLS

Requested by: Senator Ward, Representatives Tart, J. Crawford

-----SMALL SCHOOL PROGRAM ALLOTMENTS

Sec. 92. G.S. 115C-416 reads as rewritten:

"**§ 115C-416. Power to allot funds for teachers and other personnel.**

The Board shall have power to provide for the enrichment and strengthening of educational opportunities for the children of the State, and when sufficient State funds are available to provide first for the allotment of such a number of teachers as to prevent the teacher loan from being too great in any school, the Board is authorized, in its discretion, to make an additional allotment of teaching personnel to local school administrative units of the State to be used either jointly or separately, as the Board may prescribe. Such additional teaching personnel may be used in the local school administrative units as librarians, special teachers, or supervisors of instruction and for other special instructional services such as art, music, physical education, adult education, special education, or industrial arts as may be authorized and approved by the Board. The salary of all such personnel shall be determined in accordance with the State salary schedule adopted by the Board.

In addition, the Board is authorized and empowered in its discretion, to make allotments of funds for clerical assistants for classified principals and for school social workers.

The Board is further authorized, in its discretion, to allot teaching personnel to local school administrative units for experimental programs and purposes.

The Board may also allot teaching and other positions, within funds available, to local school administrative units to allow local units to place personnel occupying those positions in private hospitals and treatment facilities for the limited purpose of providing education to students confined to those institutions. The Board shall adopt rules to ensure that any such placements do not contribute to the profitability of private institutions and that they are otherwise in accordance with State and federal law."

Requested by: Senator Ward, Representatives Tart, J. Crawford
-----LEAVE ACCUMULATION/PUBLIC SCHOOL EMPLOYEES

Sec. 93. G.S. 115C-272(b) reads as rewritten:

"(b) Superintendents shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All superintendents employed by any local school administrative unit who are paid from local funds shall be paid promptly as provided by law and as State allotted superintendents are paid. Superintendents paid from State funds shall be paid as follows:

(1) Salary payments to superintendents shall be made monthly on the basis of each calendar month of service. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees. Included within the 12 months' employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. Vacation days shall not be used for extending the term of employment of individuals and shall not be cumulative from one fiscal year to another fiscal year: Provided, that superintendents may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until ~~December 31~~ June 30 of each year. On ~~December 31~~ June 30 of each year, any superintendent with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to ~~January 1~~ July 1 of the ~~next~~ same year. All vacation leave taken by the superintendent will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(3) Each local board of education shall sustain any loss by reason of an overpayment to any superintendent paid from State funds.

(4) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers' and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year."

Sec. 94. G.S. 115C-316(a) reads as rewritten:

"(a) School officials and other employees shall be paid promptly when their salaries are due provided the legal requirements for their employment and service have been met. All school officials and other employees employed by any local school administrative unit who are to be paid from local funds shall be paid promptly as provided by law and as state-allotted school officials and other employees are paid.

Public school employees paid from State funds shall be paid as follows:

(1) Employees Other than Superintendents, Supervisors and Classified Principals on an Annual Basis. -- Salary payments to employees other than superintendents, supervisors, and classified principals employed on an annual basis shall be made monthly at the end of each calendar month of service. Included within their term of employment shall be annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for state employees for each calendar month of employment. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment each local board of education shall designate the same or an equivalent number of legal holidays as those designated by the State Personnel Commission for State employees.

(2) School Employees Paid on an Hourly or Other Basis. -- Salary payments to employees other than those covered in G.S. 115C-272(b)(1), 115C-285(a)(1) and (2), 115C-302(a)(1) and (2), and 115C-316(a)(1) shall be made at a time determined by each local board of education. Expenditures for the salary of these employees from State funds shall be within allocations made by the State Board of Education and in accordance with rules and regulations approved by the State Board of Education concerning allocations of State funds: Provided, that any individual school employee employed for a term of 10 calendar months may be paid in 12 monthly installments if the employee so requests on or before the first day of the school year. Such request shall be filed in the administrative unit which employs the employee. The payment of the annual salary in 12 installments instead of 10 shall not increase or decrease said annual salary nor in any other way alter the contract between the employee and the said administrative unit. Included within the term of employment shall be provided for full-time employees annual vacation leave at the same rate provided for State employees, computed at one-twelfth (1/12) of the annual rate for State employees for each calendar month of employment, to be taken under policies determined by each local board of education. On a day that employees are required to report for a workday but pupils are not required to attend school due to inclement weather, an employee may elect not to report due to hazardous travel conditions and to take one of his annual vacation days or to make up the day at a time agreed upon by the employee and his immediate supervisor or principal. Included within their term of employment, each local board of education shall designate the same or an equivalent number of legal holidays occurring within the period of employment as those designated by the State Personnel Commission for State employees.

(3) Notwithstanding any provisions of this section to the contrary no person shall be entitled to pay for any vacation day not earned by that person. The first 10 days of annual leave earned by a 10- or 11-month employee during any fiscal year period shall be scheduled to be used in the school calendar adopted by the respective local boards of education. Vacation days shall not be used for extending the term of employment of individuals. Ten- or 11-month employees may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until June 30 of each year. On June 30 of each year, any of these employees with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to July 1 of the same year. All vacation leave taken by these employees will be upon the authorization of their immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(4) Twelve-month school employees other than superintendents, supervisors and classified principals paid on an hourly or other basis whether paid from State or from local funds may accumulate annual vacation leave days as follows: annual leave may be accumulated without any applicable maximum until ~~December 31~~ June 30 of each year. On ~~December 31~~ June 30 of each year, any employee with more than 30 days of accumulated leave shall have the excess accumulation cancelled so that only 30 days are carried forward to ~~January 1~~ July 1 of the ~~next~~ same year. All vacation leave taken by the employee will be upon the authorization of his immediate supervisor and under policies established by the local board of education. An employee shall be paid in a lump sum for accumulated annual leave not to exceed a maximum of 240 hours when separated from service due to resignation, dismissal, reduction in force, death, or service retirement. If the last day of terminal leave falls on the last workday in the month, payment shall be made for the remaining nonworkdays in that month. Employees retiring on disability retirement may exhaust annual leave rather than be paid in a lump sum. The provisions of this subdivision shall be accomplished without additional State and local funds being appropriated for this purpose. The State Board of Education shall adopt rules and regulations for the administration of this subdivision.

(5) All of the foregoing provisions of this section shall be subject to the requirement that at least fifty dollars ($50.00), or other minimum amount required by federal social security laws, of the compensation of each school employee covered by the Teachers'

and State Employees' Retirement System or otherwise eligible for social security coverage shall be paid in each of the four quarters of the calendar year.

(6) Each local board of education shall sustain any loss by reason of an overpayment to any school official or other employee paid from State funds."

Requested by: Senator Ward, Representatives Tart, J. Crawford

-----PROSPECTIVE TEACHER SCHOLARSHIP LOAN PROGRAM/EXPANDED TO COVER ADDITIONAL CERTIFIED EMPLOYEES

Sec. 95. G.S. 115C-471 reads as rewritten:

"§ 115C-471. Fund administered by State Superintendent of Public Instruction; rules and regulations.

The Scholarship Loan Fund for Prospective Teachers shall be administered by the State Superintendent of Public Instruction, under the following rules and regulations, and under such further rules and regulations as the State Board of Education shall in its discretion promulgate:

(1) Any resident of North Carolina who is interested in preparing to teach in the public schools of the State shall be eligible to apply in writing to the State Superintendent of Public Instruction for a regular scholarship loan in the amount of not more than two thousand dollars ($2,000) per academic school year.

(2) All scholarship loans shall be evidenced by notes made payable to the State Board of Education which shall bear interest at the rate of six percent (6%) per annum from and after September 1 following fulfillment by a prospective teacher of the requirements for a ~~teacher's~~ certificate based upon the ~~bachelor's~~ entry level degree; or in the case of persons already teaching in the public schools who obtain scholarship loans such notes shall bear interest at the prescribed rate from and after September 1 of the school year beginning immediately after the use of such scholarship loans; or in the event any such scholarship shall be terminated under the provisions of subdivision (3) of this section then such notes shall bear interest from the date of such termination. A minor recipient who signs such note or notes shall also obtain the endorsement thereon by a parent, if there be a living parent, unless such endorsement is waived by the Superintendent of Public Instruction. Such minor recipient shall be obligated upon such note or notes as fully as if he or she were of age and shall not be permitted to plead such minority as a defense in order to avoid the obligations undertaken upon such note or notes.

(3) Each recipient of a scholarship loan under the provisions of this program shall be eligible for scholarship loans each year until he has qualified for a ~~teacher's~~ certificate based upon the ~~bachelor's~~ entry level degree, but he shall not be so eligible for more than ~~four years nor after~~ the minimum number of years required by the college or university for qualifying for said certificate. The permanent withdrawal of any recipient from college or failure of such recipient to do college work in a manner acceptable to the State Superintendent of Public Instruction will immediately forfeit such recipient's right to retain such scholarship and subject such scholarship to termination by the State Superintendent of Public Instruction in his discretion. All terminated scholarships shall be regarded as vacant and subject to being awarded to other eligible persons.

(4) Except under emergency conditions applicable to the State Superintendent of Public Instruction, recipients of scholarship loans shall enter the public school system of North Carolina at the beginning of the next school term after qualifying for a ~~teacher~~ certificate based upon the ~~bachelors~~ entry level degree or in case of persons already teaching in the public schools at the beginning of the next school term after the use of such loan. All teaching service for which the recipient of any scholarship loan is obligated shall be rendered within seven years after the completion of the use of each such scholarship loan.

(5) For each full school year taught in a North Carolina public school, the recipient of a scholarship loan shall receive credit upon the amount due by reason of such loan equal to all interest accrued upon the loan to that time plus a credit of two thousand dollars ($2,000) upon the principal amount of such obligation or such lesser amount as may remain due upon said principal; provided, however, that in lieu of teaching in the public school, a recipient may elect to pay in cash the full amount of scholarship loans received plus interest then due thereon or any part thereof which has not been canceled by the State Board of Education by reason of teaching service rendered.

(6) If any recipient of a scholarship loan who is fulfilling his obligation under subdivision (4) of this section dies within the seven-year period, or if any recipient dies during the period of attendance at a college or university under a scholarship loan, any balance that has not been discharged through service shall be automatically canceled.

If any recipient of a scholarship loan fails to fulfill his obligations under subdivision (4) of this section, other than as provided above, the amount of his loan and accrued interest, if any, shall be due and payable from the time of failure to fulfill such obligations.

(7) The State Superintendent of Public Instruction shall award scholarship loans with due consideration to such factors and circumstances as: aptitude, purposefulness, scholarship, character, financial need, and areas or subjects of instruction in which the demands for teachers are greatest. Since the primary purpose of this Article is to attract worthy young people to the teaching profession, preference shall be given to high school seniors in the awarding of scholarships."

Requested by: Senator Ward, Representative Diamont

-----SCHOOL TRANSPORTATION BUDGET REDUCTION/IMPLEMENTATION

Sec. 96. (a) G.S. 115C-240(d) reads as rewritten:

"(d) The State Board of Education shall assist local boards of education by establishing guidelines and a framework through which local boards may establish, review and amend school bus routes prepared pursuant to G.S. 115C-246. The State Board shall also require local boards to implement the Transportation Information Management System or an equivalent system approved by the State Board of Education, no later than July 1, 1992. The State Board of Education shall also assist local boards of education with reference to the acquisition and maintenance of school buses or any other question which may arise in connection with the organization and operation of school bus transportation systems of local boards."

(b) G.S. 115C-246(a) reads as rewritten:

"(a) The ~~principal of the school to which a school bus has been assigned~~ superintendent of the local school administrative unit shall, prior to the

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commencement of each regular school year, prepare ~~and submit to the superintendent of the local school administrative unit~~ a plan for a definite route, including stops for receiving and discharging pupils, for each school bus ~~assigned to such school~~ so as to assure the most efficient use of such bus and the safety and convenience of the pupils assigned thereto. The superintendent ~~shall examine such plan and~~ may, in his discretion, obtain the advice of the State Board of Education with reference ~~thereto.~~ to the plan. ~~The superintendent shall make such changes in the proposed bus routes as he shall deem proper for the said purposes and, thereupon, shall approve the route. When so approved the~~ The buses shall be operated upon the route so established and not otherwise, except as provided in this Article. From time to time the principal may suggest changes in any such bus route as he shall deem proper for the said purposes, and the same shall be effective when approved by the superintendent of the local school administrative unit."

(c) The State Board of Education may modify its formula for allocating school transportation funds, in accordance with G.S. 115C-240(e), so as to make the most efficient use of the funds. The State Board of Education may use funds saved by operating the school transportation system more efficiently to complete the implementation of the Transportation Information Management System.

(d) The Department of Public Instruction shall report to the Joint Legislative Commission on Governmental Operations prior to December 1, 1990, on its efforts to lower fuel costs and improve efficiency in the student transportation system.

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----CAREER DEVELOPMENT PROGRAM TRANSITION

Sec. 97. Section 7 of Chapter 778 of the 1989 Session Laws reads as rewritten:

"Sec. 7. Existing Career Development and Lead Teacher Pilot Programs.

(a) Notwithstanding the provisions of Article 24B of Chapter 115C of the General Statutes, Article 24D of Chapter 115C of the General Statutes, or any other provision of law, funding for the career development pilot projects and the lead teacher pilot projects shall continue through the 1989-90 fiscal year: Provided, however, that any additional compensation received by an employee as a result of the unit's participation in the pilot program for the 1989-90 fiscal year and for subsequent fiscal years shall be paid as a bonus or supplement to the employee's regular salary.

Funding of these pilot projects shall continue for subsequent fiscal years only if the pilot units successfully submit local school improvement plans pursuant to the Performance-based Accountability Program, during the 1989-90 school year and during subsequent school years.

(b) Beginning with the 1993-94 fiscal ~~year,~~ year and for each year thereafter, the career development ~~and the lead teacher~~ pilot units shall receive ~~only the amount of State funds available for school units participating in a differentiated pay plan pursuant to the School Improvement and Accountability Act of 1989;~~ seven percent (7%) of teacher and administrator salaries and of the employer's contributions for social security and retirement, so long as they participate in differentiated pay plans in accordance with G.S. 115C-238.4; they shall receive no additional State funding as career development pilot ~~units or lead teacher pilot~~ units.

For fiscal years 1990-91 through 1993-94, the provisions of G.S. 115C-363.28 regarding flexible funding continue to apply to the lead teacher pilot units.

(c) The local school improvement plan for each career development pilot program shall include a schedule of modifications to the ~~career development~~ differentiated pay program. This schedule shall result in an incremental reduction or increase, as appropriate, in the amount of funds allocated for differentiated pay so that, for the 1993-94 fiscal year and subsequent fiscal years, the cost of the differentiated pay plan

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equals (i) seven percent (7%) of teacher and administrator salaries and of the employer's contributions for social security and retirement and (ii) the amount of ~~State and~~ local funds available for differentiated ~~pay for school units participating in differentiated pay plans pursuant to the School Improvement and Accountability Act of 1989.~~ pay.

For the 1990-91 fiscal year, the total amount appropriated for the career development pilot units is $4,693,368 less than it was for the 1989-90 fiscal year. It is the intent of the General Assembly to phase out the amount appropriated for the career development pilot units by reducing the amount appropriated by equal increments over the 1991-92, 1992-93, and 1993-94 fiscal years.

The State Board of Education shall require the pilot units to modify their differentiated pay programs so that the schedules of incremental reductions or increases result in these reductions.

(d) If an employee in a career development pilot unit is recommended for Career Status I or II and that status is approved by the local board of education prior to the beginning of the 1989-90 school year, the local board of education may pay that employee a bonus or supplement to his regular salary. For the 1989-90 fiscal year only, the local board of education may use any State or local funds available to it for the career development pilot program to pay these bonuses or supplements.

(e) Effective at the beginning of the 1989-90 school year, an employee may be considered for Career Status II no earlier than his third year in Career Status I; an employee may be considered for Career Status III no earlier than his third year in Career Status II.

(f) Any career ladder pilot project in a school unit that has resulted from a merger of school units, within the last calendar year preceding the effective date of this act, may be modified by the local school board, upon the recommendation of the State Superintendent of Public Instruction and with the approval of the State Board of Education. ~~This~~ For the 1989-90 fiscal year, this modification shall require no more funds than allocated to the particular project by the State Board of Education from funds appropriated to the State Board of Education in Chapter 500 of the 1989 Session Laws, the Current Operations Appropriations Act of 1989. For the 1990-91 fiscal year through the 1993-94 fiscal year, the merged unit shall receive (i) the amount of funds that was previously allocated to the particular pilot project, reduced by the State Board pursuant to subsection (c) of this section, and (ii) the amount of funds it is entitled to receive pursuant to G.S. 115C-238.4(c)(1), for the portion of the merged unit that did not participate in the pilot project.

(g) No provision of this section shall be construed to allow a local school administrative unit to pay any teacher, in salary and State-funded bonus or supplement, less than it paid that teacher on a monthly basis during the prior school year, so long as the teacher qualifies for a bonus or supplement under the local differentiated pay plan."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----BASIC EDUCATION FUNDS

Sec. 98. (a) Section 61 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 61. (a) Funds are appropriated in Section 3 of this act to the Department of Public Education for further implementation of the Basic Education Program in public schools. These funds will provide for the fifth and sixth years of the planned eight-year implementation schedule. The following information chart shows the ~~major increases in State funds over the 1988-89 fiscal year.~~ expansion budget funds for the Basic Education Program for 1989-90 totaling $69,277,440 and an additional $44,496,768 in 1990-91 for a total of $113,774,208 in 1990-91.

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BASIC EDUCATION PROGRAM

Basic Education Plan:

		1989-90	1990-91	
1.	Additional Teachers	$ 46,735,714	$ ~~90,342,391~~	81,220,565
2.	Vocational Education Teachers	1,039,116	~~2,078,823~~	1,039,116
3.	In-School Suspension	-	~~1,726,921~~	-
4.	Instructional Support	15,477,126	~~39,113,549~~	25,489,043
5.	Instructional/Lab Clerical Assistants	-	~~17,073,432~~	-
6.	Athletic Trainer Supplement	15,000	~~15,000~~	15,000
7.	Assistant Principals - Extension of Term	-	~~11,166,375~~	-
8.	Asst/Associate Superintendents	-	~~4,767,421~~	-
9.	Clerical Assistants	6,010,484	~~11,637,563~~	6,010,484
10.	Supervisors	-	~~2,611,375~~	-
	TOTAL BASIC EDUCATION PLAN	$ 69,277,440	$~~180,532,850~~	113,774,208

Of these funds, the sum of $12,925,543 for the 1990-91 fiscal year shall be used to reduce class size in grades 10-12.

With regard to the remainder of these funds, local boards of education may request waivers of State laws pertaining to the purposes for which State funds for the public schools may be used, pursuant to G.S. 115C-238.3(d), so as to use these funds for purposes, other than for classroom teachers, to implement the Basic Education Program. The General Assembly urges the State Superintendent and the State Board of Education to construe their authority to grant such waivers under G.S. 115C-238.6 broadly when they consider any such requests for waivers.

(b) The General Assembly urges local school administrative units to use funds available to them to reduce class size in science, mathematics, and language arts classes."

(b) Section 72(f) of Chapter 752 of the 1989 Session Laws reads as rewritten:

"(f) Of the funds appropriated to the Department of Public Education ~~in Section 3 of this act~~ for the 1989-91 fiscal biennium for aid to local school administrative units, the State Board of Education shall use up to $50,000 for the 1989-90 fiscal year and up to $100,000 for the 1990-91 fiscal year for the consortium established by this section. No more than one-half of the monies for the 1989-90 fiscal year or one-fourth of the monies for the 1990-91 fiscal year shall be used for administrative purposes. The remainder shall be used to provide instructional support for the participants under the plan devised by the policy board."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----COMPLETION OF BASIC EDUCATION PROGRAM

Sec. 99. (a) The General Assembly finds that given the current revenue situation of the State, the original implementation schedule of the Basic Education Program cannot be met and that the recently enacted School Improvement and Accountability Act has moved the State to a student performance orientation that is predicated on school systems using their resources flexibly to address unique local needs. The General Assembly is committed to the improvement of education and to the complete implementation of the strongest possible Basic Education Program;

therefore, the Legislative Study Commission on the Basic Education Program is hereby created to advise the General Assembly on ways that the Basic Education Program can be strengthened and on a lengthened implementation schedule for the Basic Education Program.

The Commission shall consist of 23 members: the Superintendent of Public Instruction; the chairman of the State Board of Education; one member of the Senate, one member of the House of Representatives, one school superintendent, one classroom teacher, and three members at large, appointed by the Governor; four members of the Senate, one school principal, one PTA member, and one member at large appointed by the President Pro Tempore of the Senate; and four members of the House of Representatives, one classroom teacher, one school board member, and one member at large, appointed by the Speaker of the House of Representatives.

(b) The President Pro Tempore of the Senate shall designate one of his appointees who is a member of the Senate as cochairman and the Speaker of the House of Representatives shall designate one of his appointees who is a member of the House of Representatives as cochairman. Each chairman shall serve as chairman until he ceases to be a member of the General Assembly.

(c) The Commission shall study the Basic Education Program, how it has been implemented to date, and what effect the Basic Education Program has had on educational achievement throughout the State. The Commission shall also examine the remainder of the schedule of implementation of the Basic Education Program, review all items to be funded under the Basic Education Program, consider the relationship between the Basic Education Program and the School Improvement and Accountability Act, and recommend any changes or modifications to the Basic Education Program and the School Improvement and Accountability Act that it deems appropriate.

(d) The Commission shall submit a report on its activities to the Joint Legislative Education Oversight Commission prior to February 15, 1991. The Commission shall submit a final report of its findings and recommendations to the General Assembly on or before March 31, 1991, by filing the report with the President Pro Tempore of the Senate and the Speaker of the House of Representatives. Upon filing its final report, the Commission shall terminate.

(e) The Commission, while in the discharge of official duties, may exercise all the powers provided for under the provisions of G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The Commission may meet at any time upon the joint call of the cochairmen. The Commission may meet in the State Legislative Building or the Legislative Office Building.

(f) Members of the Commission shall receive per diem, subsistence, and travel allowances in accordance with G.S. 138-5, G.S. 138-6, or G.S. 120-3.1, as appropriate.

(g) The Commission may contract for professional, clerical, or consultant services as provided by G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist in the work of the Commission. The House of Representatives' and the Senate's Supervisor of Clerks shall assign clerical staff to the Commission, upon the direction of the Legislative Services Commission. The expenses relating to clerical employees shall be borne by the Commission.

(h) When a vacancy occurs in the membership of the Commission the vacancy shall be filled by the same appointing officer who made the initial appointment.

(i) All State departments and agencies and local governments and their subdivisions shall furnish the Commission with any information in their possession or available to them.

Sec. 100. G.S. 115C-81(a) reads as rewritten:

"(a) The State Board of Education shall adopt a Basic Education Program for the public schools of the State. Before it adopts or revises the Basic Education Program, the State Board shall consult with an Advisory Committee, including at least eight members of local boards of education, that the State Board appoints from a list of nominees submitted by the North Carolina School Boards Association. The State Board shall report annually to the General Assembly on any changes it has made in the program in the preceding 12 months and any changes it is considering for the next 12 months.

The State Board shall implement the Basic Education Program within funds appropriated for that purpose by the General Assembly and by units of local government. It is the goal of the General Assembly that the Basic Education Program be fully funded and completely operational in each local school administrative unit by July 1, ~~1993.~~ 1995."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----TEACHING FELLOWS FUND USES

Sec. 101. (a) G.S. 115C-363.23A(e) reads as rewritten:

"(e) The Commission shall forgive the loan if, within seven years after graduation, the recipient teaches for four years at a North Carolina public school or at a school operated by the United States government in North Carolina. The Commission shall also forgive the loan if it finds that it is impossible for the recipient to teach for four years, within seven years after graduation, at a North Carolina public school or at a school operated by the United States government in North Carolina, because of the death or permanent disability of the recipient."

(b) G.S. 115C-363.23A(f) reads as rewritten:

"(f) All funds appropriated to or otherwise received by the Teaching Fellows Program for scholarships, all funds received as repayment of scholarship loans, and all interest earned on these funds, shall be placed in a revolving fund. This revolving fund ~~may~~ shall be used ~~only~~ for scholarship loans granted under the Teaching Fellows Program. With the prior approval of the General Assembly in the Current Operations Appropriations Act, the revolving fund may also be used for campus and summer program support, and costs related to disbursement of awards and collection of loan repayments."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----DPI GRANT FUNDS

Sec. 102. G.S. 115C-21(a) reads as rewritten:

"(a) Administrative Duties. -- It shall be the duty of the Superintendent of Public Instruction:

(1) To organize and establish a Department of Public Instruction which shall include such divisions and departments as are necessary for supervision and administration of the public school system, to administer the funds for the operation of the Department of Public Instruction, and to enter into contracts for the operations of the Department of Public Instruction.

(2) To keep the public informed as to the problems and needs of the public schools by constant contact with all school administrators and teachers, by his personal appearance at public gatherings, and by information furnished to the press of the State.

(3) To report biennially to the Governor 30 days prior to each regular session of the General Assembly, such report to include information and statistics of the public schools, with recommendations for their improvement and for such changes in the school law as shall occur to him.

(4) To have printed and distributed such educational bulletins as he shall deem necessary for the professional improvement of teachers and for the cultivation of public sentiment for public education, and to have printed all forms necessary and proper for the administration of the Department of Public Instruction.

(5) To have under his direction, in his capacity as the constitutional head of the public school system, all those matters relating to the supervision and administration of the public school system.

(6) To create a special fund within the Department of Public Instruction to manage funds received as grants from nongovernmental sources in support of public education. The Superintendent may accept grants and gifts from corporations and other sources made in support of public education and may hold and disburse such funds, in accordance with the purposes, conditions, and limitations associated with such grants and gifts. Any special fund created pursuant to this subdivision shall be subject to audit by the State Auditor."

Requested by: Senator Ward, Representative Tart

-----ELIMINATE EDUCATION REPORTS

Sec. 103. (a) G.S. 115C-363.10 is repealed.

(b) Section 55(b)(12)a. of Chapter 479 of the 1985 Session Laws is repealed.

(c) Section 68 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 68. Funds are appropriated to the Department of Public Education for the 1989-91 fiscal biennium for additional teacher positions to be used to expand curricular offerings in accordance with the Basic Education Program. Local boards of education shall use positions allocated to them with these funds to expand curricular offerings to those contained in the Basic Education Program at any grade level and in any of the identified curricular offerings based on the identification of local needs, priorities, and local schedules for implementing the Basic Education Program.

The local board of education may, with the approval of the State Board of Education, use the funds allocated to it for expanded curricular offerings to otherwise provide a curricular offering at that school, as called for in the Basic Education Program. The State Board of Education shall monitor the alternative uses of these ~~funds and shall report on such uses by February 1 of each year to the President of the Senate, the Speaker of the House of Representatives, and the Fiscal Research Division.~~ funds."

Requested by: Senator Ward, Representatives J. Crawford, Tart

-----CHILD NUTRITION STAFF DEVELOPMENT

Sec. 104. Section 56 of Chapter 752 of the 1989 Session Laws reads as rewritten:

"Sec. 56. Of the funds appropriated to the Department of Public Education for the 1989-90 fiscal year and for the 1990-91 fiscal year for aid to local school administrative units for staff development, the State Board of Education shall allocate $280,000 each fiscal year to local school units for staff development of school food service personnel."

Requested by: Senator Basnight

-----UNIFORM EDUCATION REPORTING SYSTEM FUNDS

Sec. 105. Of the funds available to the Department of Public Education for the 1990-91 fiscal year for aid to local school administrative units, the Department shall use $438,642 to reimburse 13 local school administrative units for expenses

incurred in converting to AS/400 equipment as required to implement the Uniform Education Reporting System.

Before providing these funds to any of the 13 local units that request it, the Department of Public Education shall first conduct an electronic data processing audit of the local school administrative unit that is to receive the funds to determine: (i) if the unit had used the previous equipment that was replaced by the AS/400 in a manner consistent with standard data processing management and operational procedures; and (ii) if the unit is using the current equipment in a manner consistent with standard data processing management and operational procedures. The results of the electronic data processing audits shall be delivered to the Fiscal Research Division, the Legislative Automated Systems Division, and, if requested, to the Joint Legislative Commission on Governmental Operations.

Requested by: Senator Taft, Representative Jones

-----LIMIT UNIFORM EDUCATION REPORTING SYSTEM FINES

Sec. 106. G.S. 115C-438 reads as rewritten:

"**§ 115C-438. Provision for disbursement of State money.**

The deposit of money in the State treasury to the credit of local school administrative units shall be made in monthly installments, and additionally as necessary, at such time and in such a manner as may be most convenient for the operation of the public school system. Before an installment is credited, the school finance officer shall certify to the State Board of Education the expenditures to be made by the local school administrative unit from the State Public School Fund during the month. This certification shall be filed on or before the fifth day following the end of the month preceding the period in which the expenditures will be made. The State Board of Education shall determine whether the moneys requisitioned are due the local school administrative unit, and upon determining the amount due, shall cause the requisite amount to be credited to the local school administrative unit. Upon receiving notice from the State Treasurer of the amount placed to the credit of the local school administrative unit, the finance officer may issue State warrants up to the amount so certified.

The State Board of Education may withhold money for payment of salaries for administrative officers of local school administrative units if any report required to be filed with State school authorities is more than 30 days overdue. The State Board of Education shall withhold money for payment of salaries for the superintendent, finance officer, and all other administrative officers charged with providing payroll information pursuant to G.S. 115C-12(18), if the local school administrative unit fails to provide the payroll information to the State Board in a timely fashion and substantially in accordance with the standards set by the State ~~Board.~~ Board; provided, however, the maximum amount withheld from any local school administrative unit shall be twenty-five thousand dollars ($25,000).

Money in the State Public School Fund and State bond moneys shall be released only on warrants drawn on the State Treasurer, signed by such local official as may be required by the State Board of Education."

Requested by: Senator Ward, Representative J. Crawford

-----DIFFERENTIATED PAY FUNDS ALLOCATION

Sec. 107. (a) G.S. 115C-238.4 reads as rewritten:

"**§ 115C-238.4. Differentiated pay.**

(a) Local school administrative units may include, but are not required to include, a differentiated pay plan for certified instructional staff, certified instructional support staff, and certified administrative staff as a part of their local school improvement

plans. Units electing to include differentiated pay plans in their school improvement plans shall base their differentiated pay plans on:

(1) The Career Development Pilot Program, G.S. 115C-363 **et seq.**;
(2) The Lead Teacher Pilot Program, G.S. 115C-363.28 **et seq.**;
(3) A locally designed school-based performance program, subject to limitations and guidelines adopted by the State Board of Education;
(4) A differentiated pay plan that the State Board of Education finds has been successfully implemented in another state; or
(5) A locally designed plan including any combination or modification of the foregoing plans.

(b) Support among affected staff members is essential to successful implementation of a differentiated pay plan; therefore, a local board of education that decides that a differentiated pay plan should be included in its local school improvement plan shall present a proposed differentiated pay plan to affected staff members for their review and vote. The vote shall be by secret ballot. The local board of education shall include the proposed differentiated pay plan in its local school improvement plan only if the proposed plan has the approval of a majority of the affected paid certificated instructional and instructional support staff and a majority of the affected certificated administrators.

Every three years after a differentiated pay plan receives such approval, the local board of education shall present a proposed plan to continue, discontinue, or modify that differentiated pay plan to affected staff members for their review and vote. The vote shall be by secret ballot. The local board of education shall include the proposed plan in its local school improvement plan only if the proposed plan has the approval of a majority of the affected paid certificated instructional and instructional support staff and a majority of the affected certificated administrators.

(c) Local school administrative units electing to participate in a differentiated pay plan shall receive State funds according to the terms of the plan but not to exceed:

(1) 1990-91: two percent (2%) of teacher and administrator salaries, and the employer's contributions for social security and retirement;
(2) 1991-92: three percent (3%) of teacher and administrator salaries, and the employer's contributions for social security and retirement;
(3) 1992-93: four percent (4%) of teacher and administrator salaries, and the employer's contributions for social security and retirement; ~~and~~
(4) 1993-94 ~~and thereafter: seven percent (7%)~~; five and one-half percent (5 1/2%) of teacher and administrator salaries, and the employer's contributions for social security and ~~retirement.~~ retirement; and
(5) 1994-95 and thereafter: seven percent (7%) of teacher and administrator salaries, and the employer's contributions for social security and retirement.

Any differentiated pay plan developed in accordance with this section shall be implemented within State and local funds available for differentiated pay.

(d) Attainment of the equivalent of Career Status I shall be rewarded through a new salary schedule that provides a salary differential when a certified educator successfully completes his probationary period.

(e) Any additional compensation received by an employee as a result of the unit's participation in the Program shall be paid as a bonus or supplement to the employee's regular salary. If an employee in a participating unit does not receive additional compensation, such failure to receive additional compensation shall not be construed as a demotion, as that term is used in G.S. 115C-325.

Payments of bonuses or supplements shall be made no more frequently than once every calendar quarter: Provided, however, prior to the 1994-95 school year, payments in the career development pilot units may be made on a monthly basis."

(b) Funds appropriated to the Department of Public Education in Section 3 of this act to implement the differentiated pay plans under the School Improvement and Accountability Act of 1989 for the 1990-91 school year shall not revert at the end of the 1990-91 fiscal year but shall remain available for expenditure until all bonuses or supplements for the 1990-91 school year have been paid.

Requested by: Senator Ward, Representative J. Crawford

-----STUDY OF NONCERTIFIED EMPLOYEES' SALARIES

Sec. 108. The State Board of Education and the Superintendent of Public Instruction shall submit a joint report to the 1991 General Assembly on the disposition of the two percent (2%) salary reserve funds for noncertified public school employees established by Section 38(c) of Chapter 752 of the 1989 Session Laws. The report shall address:

(1) Continuing discrepancies between the actual current salaries of noncertified public school employees and the salaries of State employees;

(2) Discrepancies between the actual salaries of noncertified employees and the salary levels recommended for the employees in studies conducted by the State Board of Education during the past 10 years, as adjusted for inflation;

(3) Salaries and numbers of noncertified employees at or below the poverty level, as established by the federal government; and

(4) A long-term, comprehensive plan to upgrade the salaries of noncertified public school employees so as to be consistent with the salaries of comparable State employees, consistent with recommendations contained in studies authorized and funded by the State Board of Education, and to increase the salaries of public school employees above the designated poverty level.

This plan shall make recommendations regarding groups in need of salary increases consistent with the above criteria and should recommend a multiyear plan with a maximum of six years to implement these increases, providing complete cost information.

Requested by: Senator Ward, Representatives Bowen, Tart

-----SAMPSON SCHOOL FUNDS/DEADLINE EXTENDED

Sec. 109. Funds in the amount of $2,000,000 awarded from the Critical School Facility Needs Fund by the Commission on School Facility Needs to the Sampson County Board of Education and the Sampson County Commissioners to construct school facilities as approved by the Commission on School Facility Needs shall remain available to the Sampson County Board of Education and the Sampson County Commissioners until December 1, 1991.

Requested by: Senator Basnight, Representatives Tart, J. Crawford

-----SCHOOL PSYCHOLOGIST SALARY RECLASSIFICATION

Sec. 110. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year for aid to local school administrative units, the State Board of Education shall use $800,000 for a salary reclassification for school psychologists. The starting salary for school psychologists shall be Step 5, corresponding to 5 years of experience, on the salary schedule for certified personnel of the public schools who are classified as "G" teachers. Certified psychologists who

were employed in the public schools prior to the 1990-91 fiscal year shall be placed on the salary schedule at an appropriate step based on their years of experience.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----NATIONAL CONFERENCE ON GOVERNORS' SCHOOLS

Sec. 111. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year for aid to local school administrative units, the State Board of Education may allocate $20,000 to provide support to conduct the Fourth National Conference on Governors' Schools.

Requested by: Senator Ward, Representatives J. Crawford, Tart
-----NORTH CAROLINA GEOGRAPHIC ALLIANCE NETWORK FUNDS

Sec. 112. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year for aid to local school administrative units, the State Board of Education may use up to $50,000 to fund the North Carolina Geographic Alliance Network Program, which is headquartered at East Carolina University. The funds shall be used to:

(1) Increase communication and cooperation between the professional geographic community and the network of Regional Education Centers;

(2) Increase the number of in-service workshops conducted by professional geographers for the Regional Education Centers and local education agencies;

(3) Increase the membership of professional geographers in the North Carolina Council for Social Studies;

(4) Increase the number of professional geographers doing sessions at the annual meetings of the North Carolina Council for Social Studies;

(5) Increase advisory interaction of professional geographers with the North Carolina Board of Education with regard to geography in the curriculum; and

(6) Increase involvement of public school teachers with the North Carolina Geographic Society.

Requested by: Senator Ward, Representatives Jeralds, Tart
-----CLASS SIZE WAIVERS/TEACHER POSITIONS

Sec. 113. The Department of Public Instruction shall monitor and provide a report to the General Assembly by May 1, 1991, and annually thereafter showing the school units that have been granted class size waivers pursuant to G.S. 115C-238.3(d), have reported class size exceptions, and have converted State-funded teacher positions to other positions, dollars, or other expenditures.

Requested by: Senator Chalk, Representatives J. Crawford, Sizemore
-----CITIES-IN-SCHOOLS CONTRACT AUTHORIZATION

Sec. 114. Notwithstanding the provisions of G.S. 143-16.3, the Department of Public Education may contract with the Cities-in-Schools Dropout Prevention programs in North Carolina, to provide technical assistance to local education agencies in coordinating public-private partnerships in dropout prevention programs.

Requested by: Senator Ward, Representative Diamont
-----JOINT LEGISLATIVE EDUCATION OVERSIGHT COMMITTEE

Sec. 115. Chapter 120 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 12H.

"Joint Legislative Education Oversight Committee.

"§ 120-70.80. Creation and membership of Joint Legislative Education Committee.

The Joint Legislative Education Committee is established. The Committee consists of 16 members as follows:

(1) Eight members of the Senate appointed by the President Pro Tempore of the Senate, at least two of whom are members of the minority party; and

(2) Eight members of the House of Representatives appointed by the Speaker of the House of Representatives, at least three of whom are members of the minority party.

Terms on the Committee are for two years and begin on the convening of the General Assembly in each odd-numbered year, except the terms of the initial members, which begin on appointment and end on the day of the convening of the 1991 General Assembly. Members may complete a term of service on the Committee even if they do not seek reelection or are not reelected to the General Assembly, but resignation or removal from service in the General Assembly constitutes resignation or removal from service on the Committee.

A member continues to serve until his successor is appointed. A vacancy shall be filled within 30 days by the officer who made the original appointment.

"§ 120-70.81. Purpose and powers of Committee.

(a) The Joint Legislative Education Oversight Committee shall examine, on a continuing basis, the several educational institutions in North Carolina, in order to make ongoing recommendations to the General Assembly on ways to improve public education from kindergarten through higher education. In this examination, the Committee shall:

(1) Study the budgets, programs, and policies of the Department of Public Instruction, the State Board of Education, the Department of Community Colleges, the Board of Governors of The University of North Carolina, and the constituent institutions of The University of North Carolina to determine ways in which the General Assembly may encourage the improvement of all education provided to North Carolinians and may aid in the development of more integrated methods of institutional accountability;

(2) Examine, in particular, the Basic Education Plan and the School Improvement and Accountability Act of 1989, to determine whether changes need to be built into the plans, whether implementation schedules need to be restructured, and how to manage the ongoing development of the policies underlying these legislative plans, including a determination of whether there is a need for the legislature to develop ongoing funding patterns for these plans;

(3) Study other states' educational initiatives in public schools, community colleges, and public universities, in order to provide an ongoing commentary to the General Assembly on these initiatives and to make recommendations for implementing similar initiatives in North Carolina; and

(4) Study any other educational matters that the Committee considers necessary to fulfill its mandate.

(b) The Committee may make interim reports to the General Assembly on matters for which it may report to a regular session of the General Assembly. A report to the General Assembly may contain any legislation needed to implement a recommendation of the Committee.

"**§ 120-70.82. Organization of Committee.**

(a) The President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each designate a cochair of the Joint Legislative Education Committee. The Committee shall meet at least once a quarter and may meet at other times upon the joint call of the cochairs.

(b) A quorum of the Committee is nine members. No action may be taken except by a majority vote at a meeting at which a quorum is present. While in the discharge of its official duties, the Committee has the powers of a joint committee under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4.

(c) Members of the Committee receive subsistence and travel expenses as provided in G.S. 120-3.1. The Committee may contract for consultants or hire employees in accordance with G.S. 120-32.02. The Legislative Services Commission, through the Legislative Administrative Officer, shall assign professional staff to assist the Committee in its work. Upon the direction of the Legislative Services Commission, the Supervisors of Clerks of the Senate and of the House of Representatives shall assign clerical staff to the Committee. The expenses for clerical employees shall be borne by the Committee."

Requested by: Representatives J. Crawford, Tart

-----PUBLIC SCHOOL TEACHERS/LIABILITY PROTECTION

Sec. 116. Of the funds appropriated to the Department of Public Education for the 1990-91 fiscal year, an amount equal to five dollars ($5.00) for each teacher paid from the General Fund shall be allocated by the State Board of Education to each local school administrative unit to provide comprehensive general liability protection, including coverage for errors and omissions, for teachers employed by the local school administrative unit for the 1990-91 school year.

Requested by: Senator Basnight

-----GATES COUNTY SCHOOL WASTEWATER TREATMENT

Sec. 120. The wastewater treatment systems of the Gates County Junior High School and the Gates County High School may be tied into the wastewater treatment system of the Gates County Correctional Center.

Requested by: Senator Martin of Pitt, Representative Diamont

-----DRIVER TRAINING PROGRAM FUNDING FROM HIGHWAY FUND WITH REIMBURSEMENT TO HIGHWAY FUND FROM HIGHWAY TRUST FUND

Sec. 144. (a) Notwithstanding G.S. 20-88.1, all expenses incurred by the State in carrying out the Driver's Training and Education Program up to seventeen million dollars ($17,000,000) for the 1990-91 fiscal year shall be paid out of the Highway Fund. The Department of Transportation shall transfer from the Highway Fund to the State Treasurer the sum of $17,000,000 to be deposited as nontax revenue to partially offset the cost of the Driver Education Program. The State Board of Education may use funds appropriated to the Department of Public Education for aid to local school administrative units if additional funds are required to operate this program.

(b) Section 4.3 of Chapter 692 of the 1989 Session Laws is repealed.

(c) Nothwithstanding G.S. 105-187.9, in fiscal year 1990-91, the State Treasurer shall transfer the sum of three hundred fifty-six million dollars

($356,000,000) of highway use tax revenue deposited in the Highway Trust Fund under G.S. 105-187.9, including revenue designated as highway use tax revenue by an act of the General Assembly, from the Highway Trust Fund to other Funds in accordance with this subsection. The Treasurer shall transfer the first two hundred sixty-four million dollars ($264,000,000) of highway use tax revenue from the Highway Trust Fund to the General Fund. The Treasurer shall transfer the next seventeen million dollars ($17,000,000) of highway use tax revenue from the Highway Trust Fund to the Highway Fund to reimburse it for funding driver education under G.S. 20-88.1. The Treasurer shall transfer the next seventy-five million dollars ($75,000,000) of highway use tax revenue from the Highway Trust Fund to the General Fund. The transfers made by this subsection are in lieu of the transfer otherwise required by G.S. 105-187.9.

Requested by: Senator Goldston, Representative McLaughlin

-----LRC STUDY ON DRIVERS' EDUCATION

Sec. 145. The Legislative Research Commission may study the cost, funding, and use of personnel in providing a Drivers' Education Program to the State's public school students with a view to promoting the program's efficiency, modifying its funding as appropriate, and, if possible, reducing its cost. The Commission may report the findings and recommendations of its study to the 1991 General Assembly.

Requested by: Senator Royall

-----CHARGES FOR OVERDRAFT IN STATE TREASURER'S DISBURSING ACCOUNT

Sec. 17. G.S. 143-3.2 reads as rewritten:

"**§ 143-3.2. Issuance of warrants upon State Treasurer.**

(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts.

When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants.

(b) The State Treasurer may impose on an agency a fee of fifteen dollars ($15.00) for each check drawn against the agency's disbursing account that causes the balance in the account to be in overdraft or while the account is in overdraft. The financial officer shall pay the fee from non-State or personal funds to the General Fund to the credit of the miscellaneous non-tax revenue account by the agency."

Requested by: Senator Conder

-----SCHOOL SUPPLEMENTAL INSTRUCTIONAL MATERIAL/ DIFFERENTIATED PAY PLANS

Sec. 23. (a) G.S. 115C-98(b) reads as rewritten:

"(b) Local boards of education shall adopt written policies concerning the procedures to be followed in their local school administrative units for the selection and procurement of supplementary textbooks, library books, periodicals, audio-visual materials, and other supplementary instructional materials needed for instructional purposes in the public schools of their units.

Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, to determine if the materials are related to and within the limits of the prescribed curriculum, and to determine when the materials may be presented to students during the school day. Supplementary materials and contracts for supplementary materials are not subject to approval by the State Board of Education.

Supplementary books and other instructional materials shall neither displace nor be used to the exclusion of basic textbooks."

(b) G.S. 115C-47 is amended by adding a new subdivision to read:

"(33) Local boards of education shall have sole authority to select and procure supplementary instructional materials, whether or not the materials contain commercial advertising, pursuant to the provisions of G.S. 115C-98(b)."

(c) G.S. 115C-238.4 is amended by adding a new subsection to read:

"(f) If a local school administrative unit bases its differentiated pay plan on a locally designed school-based performance program, pursuant to subdivision (a)(3) of this section, the plan shall provide that following the attainment of the local school goals, the local board of education shall make a determination of which certified staff members contributed to the attainment of those goals. Differentiated pay bonuses shall then be distributed to those designated employees. The local board of education shall make the determination upon recommendation of (i) the superintendent and (ii) any other person or committee designated in the local differentiated pay plan. The other person or committee designated in the local differentiated pay plan may be the principal, a school-based committee, or any other person or local committee."

(d) The State Board of Education shall study the use in the public schools of supplementary materials that contain commercial advertising or that identify commercial products and that are provided to the public schools at less than fair market value. The State Board shall evaluate the impact of these supplementary materials on the instructional program in the public schools.

The State Board shall report the results of this study to the General Assembly prior to March 15, 1991.

Requested by: Senator Kaplan

-----PARENTAL INVOLVEMENT IN SCHOOLS/STUDY

Sec. 24. The Education Study Commission, which was created in Part V of Chapter 802 of the 1989 Session Laws, shall study the concept of requiring parents to spend time at school with their children. During the course of this study, the Education Study Commission shall consider the legislation proposed in the first edition of Senate Bill 1524 of the 1989 Session.

Requested by: Senator Royall, Representative Diamont

-----SCHOOL ADMINISTRATOR SALARY SCHEDULE

Sec. 25. (a) Section 38(a1) of Chapter 752 of the 1989 Session Laws is repealed.

(b) Section 38(a2) of Chapter 752 of the 1989 Session Laws reads as rewritten:

"(a2) Superintendents, Assistant Superintendents, Associate Superintendents, Supervisors, Directors, Coordinators, Evaluators, Program Administrators, Principals, and Assistant Principals--1990-91. The Director of the Budget may transfer from the salary increase reserve fund created in Section 3 of this act for fiscal year 1990-91 funds necessary to provide an average annual salary increase of six percent (6%), including funds for the employer's retirement and Social Security contributions, commencing July 1, 1990, for all superintendents, assistant superintendents, associate superintendents, supervisors, directors, coordinators, evaluators, program administrators, principals, and assistant principals whose salaries are supported from the State's General Fund. ~~These funds shall be allocated to individuals according to rules adopted by the State Board of Education and the Superintendent of Public Instruction so as to begin the first year of the implementation schedule of the salary schedule developed pursuant to subsection (a1) of this section.~~ These funds may not be used for any purpose other than for the salary increase and necessary employer contributions provided by this subsection."

Requested by: Senator Royall
-----EDUCATION GOVERNANCE STUDY

Sec. 26. The Task Force on Excellence in Secondary Education of the Department of Public Instruction shall study the method of selecting education officials and the educational governance structure at the State level. The Task Force shall report the results of its study and its recommendations to the General Assembly prior to the convening of the 1991 General Assembly.

Requested by: Representative Chapin
-----YEAR-ROUND EDUCATION

Sec. 27. (a) The State Board of Education shall study the concept of year-round education and shall develop policies and procedures for local school administrative units that want to implement year-round education. The State Board of Education shall report the results of its study and any policies and procedures it develops to the General Assembly prior to the convening of the 1991 General Assembly.

The State Board shall also develop a grant program for local school administrative units to use in planning for the implementation of year-round education.

(b) The Department of Public Instruction shall develop the ability to offer technical expertise to local school administrative units that want to implement year-round education.

(c) The Department of Public Education shall fund this study from funds available to it.

Requested by: Representative Diamont
-----PUBLIC SCHOOL TESTING FUNDS

Sec. 28. Of the funds appropriated for aid to local school administrative units for the 1990-91 fiscal year, the State Board of Education may allocate $375,000 to the Department of Public Instruction to implement and administer end-of-course tests in physical sciences and English II (essay) and to develop end-of-grade tests for grades three through eight, necessary to implement the School Improvement and Accountability Act of 1989.

PART VII.-----SCHOOL IMPROVEMENT ACT STUDY (H.J.R. 2367 - Nesbitt)

Sec. 7.1. In addition to the issues authorized for study pursuant to Section 5.4 of Chapter 802 of the 1989 Session Laws, the Education Study Commission may study methods of increasing involvement of parents and teachers in developing local school improvement plans under the Performance-based Accountability Program and of increasing the involvement of teachers in approving such plans.

Sec. 7.2. The study may include the provisions of Section 1 of House Bill 2367, as introduced on June 6, 1990, which provided (a) for the involvement of over fifty percent (50%) of the teachers in a local school administrative unit in developing the unit's local school improvement plan, for (b) a vote by teachers in each individual school for approving the strategies for that school for attaining the local student performance goals, and (c) for a vote by teachers and administrators before submission of a local school improvement plan to the State Superintendent for approval. The study may also include consideration of methods of involvement of substantial numbers of parents in developing the unit's local school improvement plan.

Senate Bill 382, Summer Intern Use Expanded--Page 59

Senate Bill 463, Athlete Agents Regulated--Page 61

Senate Bill 1345, Merit Pay Changes--Page 69

Senate Bill 1402, Performance Pay Oversight--Page 75

Senate Bill 1598, Retiree's Increase--Page 79

Senate Bill 1615, Panel/Due Process Hearing--Page 87

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House Bill 1314, Flexible Benefit Plans--Page 99

House Bill 1679, Handicapped Education Age Change--Page 103

House Bill 2335, UNC Management Flexibility--Page 115

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 900
SENATE BILL 382

AN ACT TO EXPAND THE LIST OF OFFICES AND DEPARTMENTS RECEIVING SUMMER INTERNS ALLOCATED BY THE NORTH CAROLINA INTERNSHIP COUNCIL OF THE DEPARTMENT OF ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-417 reads as rewritten:

"**§ 143B-417. North Carolina Internship Council -- creation; powers and duties.**

There is hereby created the North Carolina Internship Council of the Department of Administration. The North Carolina Internship Council shall have the following functions and duties:

(1) To determine the number of student interns to be allocated to each of the following offices or departments:

a. Office of the Governor
b. Department of Administration
c. Department of Correction
d. Department of Cultural Resources
e. Department of Revenue
f. Department of Transportation
g. Department of Natural Resources and Community Development
h. Department of Commerce
i. Department of Crime Control and Public Safety
j. Department of Human Resources
k. Office of the Lieutenant Governor
l. Office of the Secretary of State
m. Office of the State Auditor
n. Office of the State Treasurer
o. Department of Public Education
p. Repealed by Session Laws 1985, c. 757, s. 162, effective July 1, 1985
q. Department of Agriculture
r. Department of Labor
s. Department of Insurance
t. Office of the Speaker of the House of Representatives
u. Justices of the Supreme Court and Judges of the Court of Appeals
v. Department of Community Colleges
w. Office of State Personnel
x. Office of the Senate President Pro Tempore;

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(2) To screen applications for student internships and select from these applications the recipients of student internships; and

(3) To determine the appropriateness of proposals for projects for student interns submitted by the offices and departments enumerated in (1)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

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GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 865
SENATE BILL 463

AN ACT PROVIDING FOR THE REGULATION OF ATHLETE AGENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 78C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 8.
"Regulation of Athlete Agents.

"**§ 78C-71. Definitions.**

The following definitions apply in this Article:

(1) 'Agent contract' means any contract or agreement under which an athlete authorizes an athlete agent to negotiate to solicit on behalf of the athlete with one or more professional sports teams for the employment of the athlete by one or more professional sports teams.

(2) 'Athlete' means an individual who:
   a. Seeks to be employed as a professional athlete;
   b. Has never signed a contract for employment with a professional sports team; and
   c. Is enrolled in a high school located within this State, or has been admitted to an institution of higher education located within this State.

   Execution of a personal service contract with the owner or prospective owner of a professional sports team for the purpose of future athletic services is equivalent to signing a contract for employment with a professional sports team.

(3) 'Athlete agent' means a person that, for compensation, directly or indirectly recruits or solicits an athlete to enter into an agent contract, professional sports services contract, or financial services contract with that person or that for a fee procures, offers, promises, or attempts to obtain employment for an athlete with a professional sports team.

(4) 'Financial services contract' means any contract or agreement under which an athlete authorizes an athlete agent to provide financial services for the athlete, including the making and execution of investment and other financial decisions by the agent on behalf of the athlete. Excluded from this definition are financial services contracted for by the athlete directly with banks, securities dealers, and other financial institutions.

(5) 'Person' means an individual, a company, a corporation, an association, a partnership, or another legal entity.

"**§ 78C-72. Registration requirements; renewal.**

(a) An athlete agent must register with the Secretary of State before the athlete agent may contact an athlete, either directly or indirectly, while the athlete is located in this State. An athlete agent may make those contacts only in accordance with this Article.

(b) An applicant for registration as an athlete agent must submit a written application for registration to the Secretary of State on a form prescribed by the Secretary of State. The applicant must provide the information required by the Secretary of State, which shall include:

(1) The name of the applicant and the address of the applicant's principal place of business;

(2) The business or occupation engaged in by the applicant for the five years immediately preceding the date of application;

(3) A description of the applicant's formal training, practical experience, and educational background relating to the applicant's professional activities as an athlete agent;

(4) If requested by the Secretary of State, the names and addresses of five professional references; and

(5) The names and addresses of all persons, except bona fide employees on stated salaries, that are financially interested as partners, associates, or profit sharers in the operation of the business of the athlete agent, except that an application for registration or renewal by any member of the North Carolina State Bar must state only the names and addresses of those persons that are involved in the activities of the athlete agent and is not required to state the names and addresses of all persons who may be financially interested as members of a law firm or professional corporation but who do not become involved in the business of the athlete agent.

(c) If the applicant is a corporation, the information required by subsection (b) of this section must be provided by each officer of the corporation. If the applicant is an association or a partnership, the information must be provided by each associate or partner.

(d) A certificate of registration issued under this Article is valid for one year from the date of issuance. The Secretary of State by rule may adopt a system under which certificates of registration expire on various dates during the year. For the year in which the registration expiration date is changed, the renewal fee payable on the anniversary of the date of issuance shall be prorated so that each registrant pays only that portion of the fee that is allocable to the number of months during which the registration is valid. On the renewal of the certificate of registration on the new expiration date, the total registration renewal fee is payable.

(e) A registered athlete agent may renew the registration by filing a renewal application in the form prescribed by the Secretary of State, accompanied by the renewal fee. The renewal application must include the information prescribed by the Secretary of State, which shall include:

(1) The names and addresses of all athletes for whom the athlete agent is providing professional services as an athlete agent for compensation at the time of the renewal; and

(2) The names and addresses of all athletes not currently represented by the athlete agent for whom the athlete agent has performed professional services as an athlete agent for compensation during the three years preceding the date of the application.

(f) The fee for issuing a certificate of registration or renewing a registration is two hundred dollars ($200.00). The fee is payable when an application for a certificate or the renewal of a certificate is filed and is not refundable to the applicant if the certificate or renewal is denied. No fee is imposed for a temporary certificate of registration.

(g) When an application for registration or renewal is made and the registration process has not been completed, the Secretary of State may issue a temporary or provisional registration certificate that is valid for no more than 90 days.

(h) Before the issuance or renewal of a certificate of registration, an athlete agent that enters into a financial services contract with an athlete must deposit with the Secretary of State a surety bond in the sum of one hundred thousand dollars ($100,000), payable to the State and conditioned that the person applying for the registration will comply with this Article, will pay all amounts due any individual or group of individuals when the person or the person's representative or agent has received those amounts, and will pay all damages caused to any athlete by reason of the intentional misrepresentation, fraud, deceit, or any unlawful or negligent act or omission by the registered athlete agent or the agent's representative or employee while acting within the scope of the financial services contract. The athlete agent shall maintain the bond until two years after the date on which the athlete agent ceases to engage in the provision of financial services for an athlete. This subsection does not limit the recovery of damages to the amount of the surety bond.

(i) If an athlete agent that has entered into a financial services contract with an athlete fails to file a new bond with the Secretary of State not later than the 30th day after date of receipt of a notice of cancellation issued by the surety of the bond, the Secretary of State shall suspend the certificate of registration issued to that athlete agent under the bond until the athlete agent files a new surety bond with the Secretary of State.

(j) An athlete agent that enters into an agent contract only is not required to meet the bond requirements of this section.

(k) The registration requirements of this section do not apply to a North Carolina licensed and resident attorney who:

a. Neither advertises directly for, nor solicits, any athlete by representing to any person that he has special experience or qualifications with regard to representing athletes; and

b. Represents no more than two athletes.

"§ 78C-73. Disciplinary actions, investigations and subpoenas.

(a) The Secretary of State may suspend, deny, or revoke a certificate of registration issued under this Article for a violation of this Article or rule adopted under this Article or may take other disciplinary action. Chapter 150B of the General Statutes governs the denial, suspension, or revocation of a certificate of registration.

(b) The Secretary of State in his discretion:

(1) May make such public or private investigations within or outside of this State as he deems necessary to determine whether any person has violated or is about to violate any provision of this Article or any rule or order hereunder, or to aid in the enforcement of this Article or in the prescribing of rules and forms hereunder;

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the Secretary of State determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) May publish information concerning any violation of this Article or any rule or order hereunder; and

(4) May designate employees of the Office of Secretary of State as investigators to implement the provisions of this Article. Investigators may serve and execute notices, orders, or demands issued by the Secretary of State for the surrender of registrations or relating to any administrative proceeding.

(c) For the purpose of any investigation or proceeding under this Article, the Secretary of State or any employee designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Secretary of State deems relevant or material to the inquiry.

(d) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of competent jurisdiction, upon application by the Secretary of State, may issue to the person an order requiring him to appear before the Secretary of State, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(e) The Secretary of State may act under subsection (c) or apply under subsection (d) to enforce subpoenas in this State at the request of a governmental agency of another state that administers sports law if the alleged activities constituting a violation for which the information is sought would be a violation of this Article or any rule hereunder if the alleged activities had occurred in this State.

"§ 78C-74. Disposition of fees.

Fees and other funds received under this Article by the Secretary of State shall be deposited in the State treasury to the credit of the General Fund.

"§ 78C-75. Contracts; cancellation option.

(a) Any agent contract or financial services contract to be used by a registered athlete agent with an athlete must be on a form approved by the Secretary of State.

(b) Each contract must state the fees and percentages to be paid by the athlete to the athlete agent and must include the following statements printed in at least 10-point boldface type:

NOTICE TO CLIENT

(1) THIS ATHLETE AGENT IS REGISTERED WITH THE SECRETARY OF STATE OF THE STATE OF NORTH CAROLINA. REGISTRATION WITH THE SECRETARY OF STATE DOES NOT IMPLY APPROVAL OR ENDORSEMENT BY THE SECRETARY OF STATE OF THE COMPETENCE OF THE ATHLETE AGENT OR OF THE SPECIFIC TERMS AND CONDITIONS OF THIS CONTRACT.

(2) DO NOT SIGN THIS CONTRACT IF YOU HAVE NOT READ IT OR IF IT CONTAINS BLANK SPACES.

(3) IF YOU DECIDE THAT YOU DO NOT WISH TO PURCHASE THE SERVICES OF THE ATHLETE AGENT, YOU MAY CANCEL THIS CONTRACT BY NOTIFYING THE ATHLETE AGENT IN WRITING OF YOUR DESIRE TO CANCEL THE CONTRACT NOT LATER THAN THE 16TH DAY AFTER THE DATE ON WHICH YOU SIGN THIS CONTRACT.

(c) Each athlete agent shall file a memorandum of contract for each agent contract and financial services contract with the Secretary of State and the athlete's high school principal or the athletic director of the institution of higher learning to which the athlete is admitted. A memorandum of contract shall include the date of the contract, the name and address of the athlete, the name and address of the athlete agent, the name and address of the employer, the date of the memorandum of contract, and the signature of the athlete agent. The athlete agent must file the

memorandum of contract with the Secretary of State and the educational institution within five days after the date the contract is signed by the athlete.

(d) An athlete may cancel an agent contract or a financial services contract before the expiration of the 16th day after the contract is signed, or an executed copy of the contract is delivered to the athlete and the memorandum of contract is filed with the school, whichever is later, by notifying the athlete agent of the cancellation in writing.

"§ 78C-76. Advertising requirement; prohibitions.

(a) In all forms of advertising used by the athlete agent, the agent shall disclose the name and address of the agent.

(b) An athlete agent may not:

(1) Publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement or give any false information or make any false promises or representations concerning any employment to any person;

(2) Divide fees with or receive compensation from a professional sports league or franchise or its representative or employee;

(3) Enter into any agreement, written or oral, by which the athlete agent offers anything of value to any employee of a high school or of an institution of higher education located in this State in return for the referral of any clients by that employee;

(4) Offer anything of value, excluding reasonable entertainment expenses and transportation expenses to and from the athlete agent's registered principal place of business, to induce an athlete to enter into an agreement by which the athlete agent will represent the athlete; or

(5) Except as provided by G.S. 78C-77, directly contact an athlete to discuss the athlete agent's representation of the athlete in the marketing of the athlete's athletic ability or reputation or the provision of financial services by the athlete agent, or enter into any agreement, written or oral, by which the athlete agent will represent the athlete, until after completion of the athlete's last high school or intercollegiate contest, including postseason games, and may not enter into an agreement before the athlete's last high school or intercollegiate contest that purports to take effect at a time after that contest is completed.

(c) This Article does not prohibit or limit an athlete agent from sending to an athlete written materials relating to the professional credentials of the agent or to specific services offered by the agent relating to the representation of an athlete in the marketing of an athlete's athletic ability or reputation or to the provision of financial services by the agent to the athlete. This Article does not prohibit an athlete or the athlete's parents, legal guardians, or other advisors from contacting and interviewing an athlete agent to determine that agent's professional proficiency in the representation of an athlete, in the marketing of the athlete's athletic ability or reputation, or the provision of financial services by the agent on behalf of the athlete.

"§ 78C-77. Permitted contacts with certain athletes.

An athlete agent must give prior written notice of his intention to contact an athlete with respect to representing the athlete as an athlete agent to the athletic director of the institution of higher education, or to the principal of the high school in which the athlete is enrolled. All such contact shall strictly adhere to the rules of each separate institution with regard to the time, place, and duration of the athlete agent's contact.

"§ 78C-78. Remedies for violation; criminal penalty.

(a) In any civil action brought based upon a violation of G.S. 78C-72(a) or G.S. 78C-76, the relief granted by the court may include the following:

(1) Forfeiture of any right of repayment the athlete agent may otherwise have for anything of value either received by an athlete as an inducement to enter into any agent contract or financial services contract or received by an athlete before completion of the athlete's last high school or intercollegiate contest;

(2) A refund of any consideration paid to the athlete agent on an athlete's behalf; or

(3) Reasonable attorney's fees and court costs incurred by an injured party.

(b) Any agent contract or financial services contract that is negotiated by an athlete agent who has failed to comply with this Article is voidable at the option of the injured party.

(c) An athlete agent commits an offense if the agent knowingly violates G.S. 78C-72(a) or G.S. 78C-76. An offense under this subsection shall be punished as a Class J felony.

(d) The Secretary of State may refer such evidence as is available concerning violations of this Article or of any rule or order hereunder to the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Article. Upon receipt of such reference, the district attorney may request that a duly employed attorney of the Secretary of State assist in the prosecution of such violation or violations on behalf of the State.

(e) Nothing in this Article limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law.

"**§ 78C-79. Civil penalty.**

(a) The Secretary of State may issue an order against an applicant, registered person, or other person who willfully violates this Article or a rule or order of the Secretary of State under this Article, imposing a civil penalty up to a maximum of two thousand five hundred dollars ($2,500) for a single violation or of twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings. In determining the amount of penalty to be imposed, the Secretary shall consider, among other factors, the egregiousness of the violation, the degree and extent of any harm caused by the violation, the prior record of the violator in complying or failing to comply with this Article or similar laws of other states, and the amount of any monetary gain received as a result of the violation.

(b) Chapter 150B of the General Statutes governs the imposition of a civil penalty under this section.

(c) A civil penalty owed under this section may be recovered in a civil action brought by either the Secretary of State or the Attorney General.

"**§ 78C-80. Records.**

(a) An athlete agent shall keep records as provided by this section and shall provide the Secretary of State with the information contained in the records on request. The records must contain:

(1) The name and address of each athlete employing the athlete agent, the amount of any fees received from the athlete, and the specific services performed on behalf of the athlete; and

(2) All travel and entertainment expenditures incurred by the athlete agent, including food, beverages, maintenance of a hospitality room, sporting events, theatrical and musical events, and any transportation, lodging, or admission expenses incurred in connection with the entertainment.

(b) The records kept by the athlete agent under subdivision (2) of subsection (a) of this section must adequately describe:

(1) The nature of the expenditure;
(2) The dollar amount of the expenditure;
(3) The purpose of the expenditure;
(4) The date and place of the expenditure; and
(5) Each person on whose behalf the expenditure was made.

"**§ 78C-81. Rules.**

The Secretary of State may, in accordance with Chapter 150B of the General Statutes, adopt rules necessary to carry out this Article."

Sec. 2. (a) This act shall become effective September 1, 1990.

(b) An athlete agent is not required to be registered and is not required to comply with this act until January 1, 1991.

(c) In addition to the information required under G.S. 78C-72(b) as enacted by this act, a person who is engaged in business as an athlete agent on the effective date of this act must include in the registration application:

(1) The names and addresses of all athletes for whom the applicant is providing professional services regulated under this Article for compensation on the date the application is filed; and
(2) The names and addresses of all athletes not currently represented by the athlete agent for whom the athlete agent has performed professional services for compensation during the three years preceding the date of the application.

In the General Assembly read three times and ratified this the 9th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1025
SENATE BILL 1345

AN ACT TO MAKE VARIOUS CHANGES TO THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7 reads as rewritten:

"**§ 126-7. Compensation of State employees.** (a) It is the policy of the State to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit and retain a competent work force. To this end, salary increases to State employees shall be based, in part, on each individual employee's job performance and, in part, on general increases given to all State employees.

(b) To guide the Governor and the General Assembly in making appropriations to further the compensation policy of the State, the State Personnel Commission shall conduct annual compensation surveys. The Commission shall determine the percent of funds appropriated for salary increases to be reserved for a general increase for all State employees and the percent to be reserved for performance-based increases for eligible employees. The Commission shall present its recommendation on the percentages and the results of the compensation survey to the Appropriations Committees of the House and Senate no later than two weeks after the convening of the legislature in odd years and May 1st, of even years. The amount reserved for performance increases shall not be less than twenty-five percent (25%) nor more than seventy-five percent (75%) of the total allocation.

(c) Performance increases shall be based on performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S.126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:

(1) The performance appraisal system of each department, agency, or institution shall be designed and administered to ensure that performance increases are distributed fairly and reward only performance that exceeds performance requirements.

(2) To be eligible to distribute its share of the performance increase allocation, a department, agency, or institution shall have an operative performance appraisal system which has been approved by the State Personnel Director. The performance appraisal system adopted shall use a rating scale ~~of at least five levels, with the top three levels qualifying for performance increases, and~~ of:

a. Five levels, with the top two levels qualifying for performance increases; or

b. Other than five levels, with the levels qualifying for performance increases to be designated by the State

Personnel Commission, for those job classifications in those employing units where a department, agency, or institution demonstrates to the State Personnel Commission that some number of levels other than five would be appropriate, and the State Personnel Commission, after conducting a public hearing, determines that a rating scale of other than five levels is more appropriate than five levels for a particular job classification within a particular employing unit.

There shall be a presumption that a five-level system is the most appropriate system, and the department, agency, or institution must demonstrate with clear and convincing evidence that a different system is more appropriate. The performance appraisal system adopted shall adhere to modern personnel management techniques and practices in common use in the public and private sectors. Departments, agencies, and institutions with existing performance appraisal systems which use a rating scale which is not consistent with the ~~five-level~~ system described above shall have until July 1, 1991, to bring their systems into compliance with this subsection.

(3) The State Personnel Director shall help departments, agencies, and institutions to establish and administer their performance appraisal systems and shall provide initial and ongoing training in performance appraisal and performance system administration.

(4) An employee whose performance exceeds performance requirements shall receive a performance increase unless the employee's supervisor justifies in writing to the employee the decision not to award the performance increase. An employee whose performance does not exceed performance requirements shall not receive a performance increase. Standards for performance and standards for performance pay increases may be established for each department, agency, or institution. These standards may not set limits so as to preclude an employee whose performance exceeds performance requirements from consideration for an increase.

(5) The State Personnel Director shall set the performance increase ranges allowable for levels of performance that exceed performance requirements. ~~Absent the supervisor's written justification, an employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating level. With the supervisor's written justification, an individual employee's increase may vary above or below the midrange value within the allowable range.~~ An employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating, unless the supervisor can justify an increase above or below the midrange value within the allowable range. The supervisor shall give an employee written justification of his decision to award an increase above or below the midrange value when the employee requests written justification. A supervisor's performance appraisal plan, evaluation standards for each employee, and individual employee ratings and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.

(5a) If an employee is otherwise eligible for a performance increase and is at the top of (but does not exceed) a pay scale, the employee shall receive a performance increase in the form of a performance bonus. This performance bonus shall be a one-time, lump-sum award paid separately from any other payment to the employee for the year. Such award shall not serve to increase the base pay of such employee. An award of this bonus pursuant to this subdivision does not affect:

a. The value of the top of any pay scale; and

b. The employee's current salary, which will remain at the top of the pay scale.

Except as provided in this subdivision, all other provisions of this subsection shall apply to an employee at the top of a pay scale.

(6) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.

(7) An employee who disputes the fairness of his performance evaluation or the sufficiency of the increase awarded or who believes that he was unfairly denied a performance increase shall first discuss the problem with his supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final decision. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues.

(8) The State Personnel Director shall monitor the performance appraisal system and performance increase distribution of each employing unit within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports which shall include data on the demographics of performance ratings, the frequency of evaluations, the performance pay increases awarded, and the implementation schedule for performance pay increases. The Director shall analyze the data to ensure that performance increases are distributed fairly within each department, agency, and institution and across all departments, agencies, and institutions of State government and shall report back to each department, agency, and institution on its appraisal and distribution performance.

(9) The State Personnel Director shall report annually on the performance pay program to the Commission. The report shall evaluate the performance of each department, agency, and institution in the administration of its appraisal system and the distribution of performance increases within each department, agency, and institution and across State government. The report

shall include recommendations for improving the performance appraisal system and alleviating inequities. Copies of the report shall be sent to the State Auditor.

(10) The Commission shall report annually to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Standing Personnel Committees of the House and the Senate. The Commission report shall include an evaluation of the administration of the appraisal system and distribution of performance increases by each department, agency, and institution. The State Personnel Director shall recommend to the General Assembly for its approval sanctions to be levied against departments, agencies, and institutions that have deficient appraisal systems or that do not link performance increases to performance. These sanctions may include withholding performance increases from the managers and supervisors of individual employing units of departments, agencies, and institutions in which discrepancies exist.

(d) The provisions of subsections (a), (b), and (c) shall not affect the system of longevity payments established by the State Personnel Commission.

~~(e) Nothing in this section shall require or authorize any department, agency, or institution to establish a limitation on the number or percentage of employees who are eligible under this section to receive performance increases.~~"

Sec. 2. G.S. 126-35 reads as rewritten:

"**§ 126-35. Written statement of reason for disciplinary action.**

(a) No permanent employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. A copy of the written statement given the employee and the employee's appeal shall be filed by the department with the State Personnel Director within five days of their delivery. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this Article, are those actions taken in accordance with the disciplinary procedures adopted by the State Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.

(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action."

Sec. 3. G.S. 126-37 reads as rewritten:

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"§ 126-37. ~~Personnel Director to investigate, hear and recommend settlement; Personnel Commission to hear or review findings and make binding~~ review Administrative Law Judge's recommended decision and make final decision.

(a) ~~The State Personnel Director or any other person or persons designated by the Commission shall investigate the disciplinary action or alleged discrimination which is appealed to the Commission.~~ Appeals involving a disciplinary action, alleged discrimination, and any other contested case arising under this Chapter shall be conducted in the Office of Administrative Hearings as provided in Article 3 of Chapter 150B; provided that no grievance may be appealed unless the employee has complied with G.S. 126-34. The State Personnel Commission shall make a final decision in these cases as provided in G.S. 150B-36. The State Personnel Commission is hereby authorized to reinstate any employee to the position from which he has been removed, to order the employment, promotion, transfer, or salary adjustment of any individual to whom it has been wrongfully denied or to direct other suitable action to correct the abuse which may include the requirement of payment for any loss of salary which has resulted from the improperly discriminatory action of the appointing authority. The decisions of the State Personnel Commission shall be binding in appeals of local employees subject to this Chapter if the Commission finds that the employee has been subjected to discrimination prohibited by Article 6 of this Chapter or in any case where a binding decision is required by applicable federal standards. However, in all other local employee appeals, the decisions of the State Personnel Commission shall be advisory to the local appointing authority.

(b) An action brought in superior court by an employee who is dissatisfied with an advisory decision of the State Personnel Commission or with the action taken by the local appointing authority pursuant to the decision shall be heard upon the record and not as a trial **de novo**. In such an action brought by a local employee under this section, the defendant shall be the local appointing authority. If superior court affirms the decision of the Commission, the decision of superior court shall be binding on the local appointing authority.

(c) If the local appointing authority is other than a board of county commissioners, the employee must give the county notice of the appeal taken pursuant to subsection (a) of this section. Notice must be given to the county manager or the chairman of the board of county commissioners by certified mail within 15 days of the filing of the notice of appeal. The county may intervene in the appeal within 30 days of receipt of the notice. If the action is appealed to superior court the county may intervene in the superior court proceeding even if it has not intervened in the administrative proceeding. The decision of the superior court shall be binding on the county even if the county does not intervene."

Sec. 4. G.S. 126-38 reads as rewritten:

"**§ 126-38. Time limit for appeals.**

Any employee appealing any decision or action ~~to the Commission~~ shall file a ~~written statement of appeal with the Commission or its designate~~ petition for a contested case with the Office of Administrative Hearings as provided in G.S. 150B-23(a) no later than 30 days after receipt of notice of the decision or action which triggers the right of appeal."

Sec. 5. Nothing in this act shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act and any funds allocated under this act shall come from the performance pay previously appropriated.

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Sec. 6. Section 2 of this act is effective upon ratification and shall apply to affected personnel actions effective on or after the date of ratification. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1028
SENATE BILL 1402

AN ACT TO ESTABLISH A PERFORMANCE MANAGEMENT AND PAY ADVISORY COMMITTEE WITHIN EACH DEPARTMENT, AGENCY, AND INSTITUTION TO ENSURE THAT PERFORMANCE PAY INCREASES ARE MADE IN A FAIR AND EQUITABLE MANNER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7(c) reads as rewritten:

"(c) Performance increases shall be based on performance appraisals of all employees conducted by each department, agency, and institution. The State Personnel Commission, under the authority of G.S. 126-4(8), shall adopt policy and regulations for performance appraisal. The policy and regulations shall include the following:

(1) The performance appraisal system of each department, agency, or institution shall be designed and administered to ensure that performance increases are distributed fairly and reward only performance that exceeds performance requirements.

(2) To be eligible to distribute its share of the performance increase allocation, a department, agency, or institution shall have an operative performance appraisal system which has been approved by the State Personnel Director. The performance appraisal system adopted shall use a rating scale of at least five levels, with the top three levels qualifying for performance increases, and shall adhere to modern personnel management techniques and practices in common use in the public and private sectors. Departments, agencies, and institutions with existing performance appraisal systems which use a rating scale which is not consistent with the five-level system described above shall have until July 1, 1991, to bring their systems into compliance with this subsection.

(3) The State Personnel Director shall help departments, agencies, and institutions to establish and administer their performance appraisal systems and shall provide initial and ongoing training in performance appraisal and performance system administration.

(4) An employee whose performance exceeds performance requirements shall receive a performance increase unless the employee's supervisor justifies in writing the decision not to award the performance increase. An employee whose performance does not exceed performance requirements shall not receive a performance increase.

(5) The State Personnel Director shall set the performance increase ranges allowable for levels of performance that exceed

performance requirements. Absent the supervisor's written justification, an employee whose performance exceeds expectations shall receive a percentage increase equal to the midrange value for his rating level. With the supervisor's written justification, an individual employee's increase may vary above or below the midrange value within the allowable range. A supervisor's performance appraisal plan, evaluation standards for each employee, and individual employee ratings and recommended performance increase amounts, with justification, shall be reviewed and approved by that supervisor's next higher level supervisor.

(6) The State Personnel Director may suspend any performance increase that does not appear to meet the intent of the provisions of the performance pay system and require the originating department, agency, or institution to reconsider or justify the increase.

(7) An employee who disputes the fairness of his performance evaluation or the sufficiency of the increase awarded or who believes that he was unfairly denied a performance increase shall first discuss the problem with his supervisor. Appeals of the supervisor's decision shall be made only to the grievance committee or internal performance review board of the department, agency, or institution which shall make a recommendation to the head of the department, agency, or institution for final decision. The State Personnel Director shall help a department, agency, or institution establish an internal performance review board or, if it includes employee members, to use its existing grievance committee to hear performance pay disputes. Notwithstanding G.S. 150B-2(2) and G.S. 126-22, 126-25, and 126-34, performance pay disputes, including disputes about individual performance appraisals, shall not be considered contested case issues.

(7a) Each department, agency, and institution shall establish a performance management and pay advisory committee as part of the performance appraisal system. The purpose of the committee is to ensure that performance pay increases are made in an equitable manner. The committee shall be responsible for reviewing:

a. Agency performance pay policies and performance pay plan to determine whether this section and any guidelines promulgated by the Office of State Personnel have been adhered to;

b. Agency training and education programs to determine whether all employees receive appropriate information; and

c. Performance ratings within the department, agency, or institution to determine whether an equitable distribution has been made.

The committee must have a minimum of five members. The head of each department, agency, and institution shall appoint the members of the committee with equal representation of nonsupervisory, supervisory, and management employees. The committee shall elect its own chair.

The performance management and pay advisory committee shall meet at least two times each year. The committee shall submit a

written report following each meeting to the head of the department, agency, or institution. The report shall include recommendations for changes and corrections in the administration of the performance management system. The recommendations of the committee shall be advisory only. The head of the department, agency, or institution shall respond to the committee within three months. Copies of the report shall be included in the report to the Office of State Personnel that is required of that agency, department, or institution. Summaries of the report shall be included in the annual reports that are mandated by this subsection.

d. Nothing in section (7a) and each subpart hereof shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

(8) The State Personnel Director shall monitor the performance appraisal system and performance increase distribution of each employing unit within each department, agency, and institution. Each department, agency, and institution shall submit to the Director annual reports which shall include data on the demographics of performance ratings, the frequency of evaluations, the performance pay increases awarded, and the implementation schedule for performance pay increases. The Director shall analyze the data to ensure that performance increases are distributed fairly within each department, agency, and institution and across all departments, agencies, and institutions of State government and shall report back to each department, agency, and institution on its appraisal and distribution performance.

(9) The State Personnel Director shall report annually on the performance pay program to the Commission. The report shall evaluate the performance of each department, agency, and institution in the administration of its appraisal system and the distribution of performance increases within each department, agency, and institution and across State government. The report shall include recommendations for improving the performance appraisal system and alleviating inequities. Copies of the report shall be sent to the State Auditor.

(10) The Commission shall report annually to the Governor, the Lieutenant Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Standing Personnel Committees of the House and the Senate. The Commission report shall include an evaluation of the administration of the appraisal system and distribution of performance increases by each department, agency, and institution. The State Personnel Director shall recommend to the General Assembly for its approval sanctions to be levied against departments, agencies, and institutions that have deficient appraisal systems or that do not link performance increases to performance. These sanctions may include withholding performance increases from the managers and supervisors of individual employing units of departments, agencies, and institutions in which discrepancies exist."

Sec. 2. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 27th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1077
SENATE BILL 1598

AN ACT TO INCREASE THE RETIREMENT FORMULA FOR MEMBERS AND BENEFICIARIES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM, AND TO PROVIDE AN INCREASE TO RETIREES OF THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM, THE CONSOLIDATED JUDICIAL RETIREMENT SYSTEM, THE LEGISLATIVE RETIREMENT SYSTEM, AND THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly of North Carolina finds that (1) retirees and beneficiaries of the Teachers' and State Employees' Retirement System, the Local Governmental Employees' Retirement System, the Consolidated Judicial Retirement System, and the Legislative Retirement System paid no State income tax on their benefits prior to 1989; (2) the tax policy of North Carolina provided for a tax exemption on all money in, or paid by, these systems prior to 1989; and (3) compensation is due the retirees and beneficiaries for the loss of the tax exemption, except for a $4,000 exclusion, as much as possible within the limits of available resources.

Sec. 2. G.S. 135-5(b11) reads as rewritten:

"(b11) Service Retirement Allowance of Members Retiring on or afte July 1, ~~1989.~~ 1989, but before July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b. c. and d."

Sec. 3. G.S. 135-5 is amended by adding a new subsection to read:

"(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(1)b.

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 135-5(b9)(2)b. c. and d."

Sec. 4. G.S. 135-5 is amended by adding a new subsection to read:

"(rr) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session)."

Sec. 5. G.S. 135-5 is amended by adding a new subsection to read:

"(ss) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 135-5(o). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement

commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990."

Sec. 6. G.S. 135-58(a) reads as rewritten:

"(a) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 before July 1, 1990, after he either has attained his sixty-fifth birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2) and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three fourths of his final compensation:

(1) Four percent (4%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and one-half percent (3 1/2%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;

(3) Three percent (3%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the district court, district attorney, or clerk of superior court."

Sec. 7. G.S. 135-58 is amended by adding a new subsection to read:

"(a1) Any member who retires under the provisions of subsection (a) or subsection (c) of G.S. 135-57 on or after July 1, 1990, after he either has attained his 65th birthday or has completed 24 years or more of creditable service shall receive an annual retirement allowance, payable monthly, which shall commence on the effective date of his retirement and shall be continued on the first day of each month thereafter during his lifetime, the amount of which shall be computed as the sum of (1), (2), and (3) following, provided that in no event shall the annual allowance payable to any member be greater than an amount which, when added to the allowance, if any, to which he is entitled under the Teachers' and State Employees' Retirement System, the Legislative Retirement System or the North Carolina Local Governmental Employees' Retirement System (prior in any case to any reduction for early retirement or for an optional mode of payment) would total three-fourths of his final compensation:

(1) Four and two-hundredths percent (4.02%) of his final compensation, multiplied by the number of years of his creditable service rendered as a justice of the Supreme Court or judge of the Court of Appeals;

(2) Three and fifty-two hundredths percent (3.52%) of his final compensation, multiplied by the number of years of his creditable service rendered as a judge of the superior court or as administrative officer of the courts;

(3) Three and two-hundredths percent (3.02%) of his final compensation, multiplied by the number of years of his creditable

service rendered as a judge of the district court, district attorney, or clerk of superior court."

Sec. 8. G.S. 135-65 is amended by adding a new subsection to read:

"(k) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session)."

Sec. 9. G.S. 135-65 is amended by adding a new subsection to read:

"(l) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989. Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990."

Sec. 10. G.S. 120-4.21 reads as rewritten:

"**§ 120-4.21. Service retirement benefits.**

(a) Eligibility; Application. -- Any member in service may retire with full benefits who has reached 65 years of age with five years of creditable service. Any member in service may retire with reduced benefits who has reached the age of 60 years with five years of creditable service. The member shall make written application to the Board of Trustees to retire on a service retirement allowance on the first day of the particular calendar month he designates. The designated date shall be no less than one day nor more than 90 days from the filing of the application. During this period of notification, a member may separate from service without forfeiting his retirement benefits.

(b) Computation. -- Upon retirement from service in accordance with subsection (a) of this ~~section,~~ section before July 1, 1990, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four percent (4%) of his 'highest annual salary,' multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this subsection, reduced by one-fourth of one percent (1/4 of 1%) for each month his retirement date precedes his 65th birthday.

(b1) Computation. -- Upon retirement from service in accordance with subsection (a) of this section on or after July 1, 1990, a member shall receive a service retirement allowance computed as follows:

(1) For a member whose retirement date occurs on or after his 65th birthday and upon completion of five years of creditable service, four and two-hundredths percent (4.02%) of his 'highest annual salary,' multiplied by the number of years of creditable service.

(2) For a member whose retirement date occurs on or after his 60th and before his 65th birthday and upon completion of five years of creditable service, computation as in subdivision (1) of this

subsection, reduced by one-fourth of one percent (1/4 of 1%) for each month his retirement date precedes his 65th birthday.

(c) Limitations. -- In no event shall any member receive a service retirement allowance greater than seventy-five percent (75%) of his 'highest annual salary' nor shall he receive any service retirement allowance whatever while employed in a position that makes him a contributing member of any of the following retirement systems: The Teachers' and State Employees' Retirement System, the North Carolina Local Governmental Employees' Retirement System, the Law-Enforcement Officers' Retirement System, the Uniform Judicial Retirement System of North Carolina, the Uniform Solicitorial Retirement System of North Carolina or the Uniform Clerks of Court Retirement System of North Carolina. If he should become a member of any of these systems, payment of his service retirement allowance shall be suspended until he withdraws from membership in that system."

Sec. 11. G.S. 120-4.22A is amended by adding a new subsection to read:

"(f) In accordance with subsection (a) of this section, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before January 1, 1990, shall be increased by the same amount as provided to retired members and beneficiaries of the Teachers' and State Employees' Retirement System pursuant to the provisions of G.S. 135-5(rr) and (ss)."

Sec. 12. Of funds appropriated to the General Assembly, the sum of $172,000 shall be transferred to the Legislative Retirement System to fund the provisions of subsections 10 and 11.

Sec. 13. G.S. 128-27(b11) reads as rewritten:

"(b11) Service Retirement Allowance of Members Retiring on or after July 1, ~~1989.~~ 1989, but before July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1989, but before July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-three hundredths percent (1.63%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3)."

Sec. 14. G.S. 128-27 is amended by adding a new subsection to read:

"(b12) Service Retirement Allowance of Members Retiring on or after July 1, 1990. -- Upon retirement from service in accordance with subsection (a) above, on or after July 1, 1990, a member shall receive the following service retirement allowance:

(1) A member who is a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 55th birthday, and completion of five years of creditable service as a law enforcement officer, or after the completion of 30 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of his creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b8)(2).

(2) A member who is not a law enforcement officer or an eligible former law enforcement officer shall receive a service retirement allowance computed as follows:

a. If the member's service retirement date occurs on or after his 65th birthday upon the completion of five years of creditable service or after the completion of 30 years of creditable service or on or after his 60th birthday upon the completion of 25 years of creditable service, the allowance shall be equal to one and sixty-four hundredths percent (1.64%) of his average final compensation, multiplied by the number of years of creditable service.

b. This allowance shall also be governed by the provisions of G.S. 128-27(b7)(2a) and (3)."

Sec. 15. G.S. 128-27 is amended by adding a new subsection to read:

"(hh) Increase in Allowance as to Persons on Retirement Rolls as of June 1, 1990. From and after July 1, 1990, the retirement allowance to or on account of beneficiaries on the retirement rolls as of June 1, 1990, shall be increased by six-tenths of one percent (0.6%) of the allowance payable on June 1, 1990. This allowance shall be calculated on the basis of the allowance payable and in effect on June 30, 1990, so as not to be compounded on any other increase granted by act of the 1989 Session of the General Assembly (1990 Regular Session)."

Sec. 16. G.S. 128-27 is amended by adding a new subsection to read:

"(ii) From and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced on or before July 1, 1989, shall be increased by six and one-tenth percent (6.1%) of the allowance payable on July 1, 1989, in accordance with G.S. 128-27(k). Furthermore, from and after July 1, 1990, the retirement allowance to or on account of beneficiaries whose retirement commenced after July 1, 1989, but before June 30, 1990, shall be increased by a prorated amount of six and one-tenth percent (6.1%) of the allowance payable as determined by the Board of Trustees based upon the number of months that a retirement allowance was paid between July 1, 1989, and June 30, 1990."

Sec. 17. The State's contribution rate budgeted for the University Employees' Optional Retirement Program is increased from eight and thirty-seven hundredths percent (8.37%), as contained in the Current Operations Appropriations Act of 1990, to eight and forty-one hundredths percent (8.41%). The foregoing contribution rate includes one and sixty-five hundredths percent (1.65%) for hospital and medical benefits and fifty-two hundredths percent (0.52%) for the Disability Income Plan.

Sec. 18. Section 17 of this act is effective August 1, 1990. The remainder of the act is effective July 1, 1990.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1058
SENATE BILL 1615

AN ACT TO AMEND THE EXCEPTIONAL CHILDREN'S APPEALS PROCESS, TO PRESERVE FEDERAL FUNDS, AND TO SAVE THE STATE REPLACEMENT FUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-116 reads as rewritten:

"§ 115C-116. Notice of decisions; mediation, administrative review, and judicial review of disagreements.

(a) Prior Notice. -- The parent, guardian, or surrogate parent of a child shall be notified promptly when the local educational agency proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of a child as a child with special needs. The written notice shall contain a full explanation of all the procedural safeguards available to the parent, guardian, or surrogate parent including the right to review the proposed decision, and a statement offering the parent, guardian, or surrogate parent the opportunity for mediation. The local educational agency shall document that all required notices have been sent to and received by parents, guardians, or surrogate parents.

(b) Mediation. -- Mediation of disputes or disagreements regarding the identification of children with special needs and the provision of special education for children with special needs prior to formal administrative review is encouraged. If a request for formal administrative review has not been filed, the superintendent, upon the request of a parent, guardian, or surrogate parent, shall meet, or designate an assistant or associate superintendent to meet, with the parent, guardian, or surrogate parent to attempt to resolve the dispute or disagreement. The meeting shall be informal and the General Assembly intends that the meeting shall be nonadversarial, as required by G.S. 150B-22.

(c) Right of Review. -- The parent, guardian, or surrogate parent may obtain review of proposed decisions on the following grounds:

(1) The child has not been identified or has been incorrectly identified as a child with special needs;
(2) The child's individualized education plan is not appropriate to meet his needs;
(3) The child's individualized education plan is not being implemented; or
(4) The child is otherwise being denied a free, appropriate education.

In addition, a local educational agency may obtain review as provided by this section if a parent, guardian, or surrogate parent refuses to consent to the evaluation of the child for the purpose of determining whether the child is a child with special needs or for the purpose of developing a free appropriate educational program for the child.

(d) Administrative Review. -- Except as otherwise provided in this section, the administrative review shall be initiated and conducted in accordance with Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

(e) Scope of Review. -- ~~Notwithstanding the provisions of G.S. 150B-23(a) and G.S. 150B-33(b)(9), the~~ The issues for review shall be limited to those set forth in subsection (c).

(f) Venue of Hearing. -- ~~Notwithstanding the provisions of G.S. 150B-24, the~~ The hearing shall be conducted in the county where the child attends school or is entitled to enroll pursuant to G.S. 115C-366.

(g) Hearing Closed. -- ~~Notwithstanding the provisions of G.S. 150B-23(c), the~~ The hearing shall be closed to the public unless the parent, guardian, or surrogate parent, ~~prior to the beginning of the hearing,~~ requests in writing that the hearing be open to the public.

(h) ~~Recommended Decision. -- Following the hearing, the administrative law judge shall make a recommended decision to the State Board of Education. The recommended decision shall conform to and be prepared in accordance with G.S. 150B-34.~~ Decision of the Administration Law Judge. -- Following the hearing, the administrative law judge shall make a decision regarding the issues set forth in subsection (c). The decision shall contain findings of fact and conclusions of law. Notwithstanding the provisions of Chapter 150B of the General Statutes, the decision of the administrative law judge becomes final and not subject to further review unless appealed to the Review Officer as provided in subsection (i). A copy of the administrative law judge's decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the availability of appeal and the 30-day limitations period for appeal as set forth in subsection (i).

(i) ~~Final Decision by the State Board of Education. -- The final decision shall be made by the State Board of Education in accordance with G.S. 150B-36. In its discretion, the State Board may appoint a panel of at least two members of the Board to make the final decision for and on its behalf in accordance with G.S. 150B-36, and if the Board elects to exercise its discretion the decision of the panel shall be the final decision.~~ Review by Review Officer. -- Any party aggrieved by the decision of the administrative law judge may appeal that decision within 30 days after receipt of notice of the decision by filing a written notice of appeal with the Superintendent of Public Instruction. The State Superintendent of Public Instruction shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. A Review Officer must be an educator or other professional who is knowledgeable about special education and who possesses such other qualifications as may be established by the State Board of Education.

No person may be appointed as a Review Officer if that person is an employee of an agency that has been involved in the education or care of the child whose parents have filed the petition (including an employee or official of the State Department of Education or the State Board of Education) or if the person is or has been employed by the local Board of Education responsible for the education or care of the child whose parents have filed the petition. The decision of the Review Officer shall contain findings of fact and conclusions of law and becomes final unless an aggrieved party brings a civil action pursuant to subsection (k). A copy of the decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action and the 30-day limitations period for filing a civil action pursuant to subsection (k).

(j) Power to Enforce Final Decision. -- The State Board shall have the power to enforce ~~its~~ the final decision of the administrative law judge, if not appealed pursuant

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to subsection (i), or the final decision of the Review Officer, by ordering a local educational agency:

(1) To provide a child with ~~an~~ appropriate education;

(2) To place a child in a private school that is approved to provide special education and that can provide the child an appropriate education; or

(3) To reimburse parents for reasonable private school placement costs in accordance with the provisions of G.S. 115C-115 ~~in the event it determines~~ when it is determined that the local educational agency did not offer or provide the child with ~~an~~ appropriate education and the private school in which the parent, guardian, or surrogate parent placed the child was an approved school and did provide the child an appropriate education.

(k) ~~Judicial Review.~~ Right to File Civil Action. -- Any party aggrieved by the ~~State Board's decision may seek judicial review in the State courts as provided in Chapter 150B, Article 4 of the General Statutes, or in federal court as provided in 20 U.S.C. § 1415.~~ decision of the Review Officer may institute a civil action in State or federal court as provided in 20 U.S.C. § 1415 within 30 days after receipt of notice of the decision.

(l) Change in Placement. -- Upon the filing of a petition, no change may be made in the child's status or program by school officials during the period of the administrative review or subsequent judicial review, unless the parent, guardian, or surrogate parent gives written consent."

Sec. 2. This act shall become effective October 1, 1990, and shall apply to all petitions filed on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

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GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1081
HOUSE BILL 267

AN ACT TO PROVIDE THAT IT IS A FELONY OFFENSE FOR A PERSON EIGHTEEN YEARS OF AGE OR OLDER TO EMPLOY A MINOR TO COMMIT A DRUG VIOLATION, TO PROVIDE THAT A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO HIRES A MINOR TO COMMIT A DRUG VIOLATION IS CIVILLY LIABLE FOR DAMAGES FOR DRUG ADDICTION PROXIMATELY CAUSED BY THE VIOLATION, TO INCREASE THE SENTENCE FOR THE ILLEGAL SALE OR DELIVERY OF DRUGS TO A MINOR OR A PREGNANT WOMAN, AND TO PROVIDE THAT A PERSON TWENTY-ONE YEARS OF AGE OR OLDER WHO COMMITS A DRUG OFFENSE ON SCHOOL PROPERTY OR WITHIN 300 FEET OF THE BOUNDARY OF A SCHOOL IS GUILTY OF A CLASS E FELONY.

The General Assembly of North Carolina enacts:

Section 1. Article 5 of Chapter 90 of the General Statutes is amended by adding the following new section to read:

"**§ 90-95.4. Employing minor to commit a drug law violation.**

(a) A person who is at least 18 years old but less than 21 years old who hires a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as a felony that is one class more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired.

(b) A person 21 years of age or older who hires a minor to violate G.S. 90-95(a)(1) shall be guilty of a felony. An offense under this subsection shall be punishable as a felony that is two classes more severe than the violation of G.S. 90-95(a)(1) for which the minor was hired.

(c) Mistake of Age. Mistake of age is not a defense to a prosecution under this section.

(d) The term 'minor' as used in this section is defined as an individual who is less than 18 years of age."

Sec. 2. G.S. 90-95(e) reads as rewritten:

"(e) The prescribed punishment and degree of any offense under this Article shall be subject to the following conditions, but the punishment for an offense may be increased only by the maximum authorized under any one of the applicable conditions:

(1),(2) Repealed by Session Laws 1979, c. 760, s. 5.

(3) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than two years, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United

States or any other state, which offenses are punishable under any provision of this Article, he shall be punished as a Class I felon;

(4) If any person commits an offense under this Article for which the prescribed punishment includes imprisonment for not more than six months, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than two years or fined not more than two thousand dollars ($2,000), or both in the discretion of the court;

(5) Any person 18 years of age or over who violates G.S. 90-95(a)(1) by selling or delivering a controlled substance to a person under 16 years of age or a pregnant female shall be punished as a Class E ~~felon;~~ felon. Mistake of age is not a defense to a prosecution under this section. It shall not be a defense that the defendant did not know that the recipient was pregnant;

(6) For the purpose of increasing punishment, previous convictions for offenses shall be counted by the number of separate trials at which final convictions were obtained and not by the number of charges at a single trial;

(7) If any person commits an offense under this Article for which the prescribed punishment requires that any sentence of imprisonment be suspended, and if he has previously been convicted for one or more offenses under any law of North Carolina or any law of the United States or any other state, which offenses are punishable under any provision of this Article, he shall be guilty of a misdemeanor and shall be sentenced to a term of imprisonment of not more than six months or fined not more than five hundred dollars ($500.00), or both in the discretion of the ~~court.~~ court;

(8) Any person 21 years of age or older who commits an offense under G.S. 90-95(a)(1) on property used for an elementary or secondary school or within 300 feet of the boundary of real property used for an elementary or secondary school shall be punished as a Class E felon. For purposes of this subdivision, the transfer of less than five grams of marijuana for no remuneration shall not constitute a delivery in violation of G.S. 90-95(a)(1). A person sentenced under this subdivision must serve a mandatory term of imprisonment of no less than two years, notwithstanding the provisions of G.S. 90-95(h)(5) or any other law. The sentencing judge may not suspend the mandatory two-year term of imprisonment or place the person on probation for the mandatory two-year term of imprisonment. During that time the prisoner is not eligible for early parole or early release."

Sec. 3. Article 5 of Chapter 90 of the General Statutes is amended by adding a new section to read:

"**§ 90-95.5. Civil liability - employing a minor to commit a drug offense.**

A person 21 years of age or older, who hires or employs a person under 18 years of age to commit a violation of G.S. 90-95 is liable in a civil action for damages for drug addiction proximately caused by the violation. The doctrines of contributory negligence and assumption of risk are no defense to liability under this section."

Sec. 4. This act shall become effective October 1, 1990. This act shall apply to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

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GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 822
HOUSE BILL 416

AN ACT TO REQUIRE THAT HEADLIGHTS BE ILLUMINATED WHEN WINDSHIELD WIPERS ARE ON TO MAKE THAT VEHICLE MORE DISCERNIBLE DURING PERIODS OF LIMITED VISIBILITY AND TO REQUIRE MOTOR VEHICLES TO HAVE PROPERLY WORKING SPEEDOMETERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-129(a) reads as rewritten:

"(a) When Vehicles Must Be Equipped. -- Every vehicle upon a highway within this State shall be equipped with lighted headlamps and rear lamps as required for different classes of vehicles, and subject to exemption with reference to lights on parked vehicles as declared in G.S. 20-134:

(1) During the period from sunset to sunrise,

(2) When there is not sufficient light to render clearly discernible any person on the highway at a distance of 400 feet ahead, or

~~(3) When the lack of visibility through the windshield requires the windshield wipers to be activated and the vehicle is within a school zone during the regular school hours of the school year.~~

(4) At any other time when windshield wipers are in use as a result of smoke, fog, rain, sleet, or snow, or when inclement weather or environmental factors severely reduce the ability to clearly discern persons and vehicles on the street and highway at a distance of 500 feet ahead, provided, however, the provisions of this subdivision shall not apply to instances when windshield wipers are used intermittently in misting rain, sleet, or snow. Any person violating this subdivision during the period from October 1, 1990, through December 31, 1991, shall be given a warning of the violation only. Thereafter, any person violating this subdivision shall have committed an infraction and shall pay a fine of five dollars ($5.00) and shall not be assessed court costs. No drivers license points, insurance points or premium surcharge shall be assessed on account of violation of this subdivision and no negligence or liability shall be assessed on or imputed to any party on account of a violation of this subdivision. The Commissioner of Motor Vehicles and the Superintendent of Public Instruction shall incorporate into driver education programs and driver licensing programs instruction designed to encourage compliance with this subdivision as an important means of reducing accidents by making vehicles more discernible during periods of limited visibility."

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Sec. 2. Article 3 of Chapter 20 of the General Statutes is amended by adding the following new section to read:

"**§ 20-123.2 Speedometer.**

(a) Every self-propelled motor vehicle when operated on the highway shall be equipped with a speedometer which shall be maintained in good working order.

(b) Any person violating this section shall have committed an infraction and may be ordered to pay a penalty of not more than twenty-five dollars ($25.00). No drivers license points, insurance points or premium surcharge shall be assessed on or imputed to any party on account of a violation of this section."

Sec. 3. This act shall become effective October 1, 1990. Section 1 shall expire on June 30, 1991.

In the General Assembly read three times and ratified this the 28th day of June, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 907
HOUSE BILL 1241

AN ACT TO CLARIFY THE ADMISSIONS STATUS OF PERSONS ELIGIBLE FOR IN-STATE TUITION AT THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 14 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-143.4. Admissions status of persons charged in-State tuition.**

A person eligible for the in-State tuition rate pursuant to this Article shall be considered an in-State applicant for the purpose of admission; provided that, a person eligible for in-State tuition pursuant to G.S. 116-143.3(c) shall be considered an in-State applicant for the purpose of admission only if at the time of seeking admission he is enrolled in a high school located in North Carolina or enrolled in a general education development (GED) program in an institution located in this State."

Sec. 2. This act is effective upon ratification and applies to admissions for academic years beginning academic year 1989-90.

In the General Assembly read three times and ratified this the 13th day of July, 1990.

JAMES C. GARDNER
James C. Gardner
President of the Senate

J. L. MAVRETIC
J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1059
HOUSE BILL 1314

AN ACT TO AUTHORIZE FLEXIBLE COMPENSATION PLANS FOR STATE AGENCY EMPLOYEES, UNIVERSITY EMPLOYEES, COMMUNITY COLLEGE EMPLOYEES, AND PUBLIC SCHOOL EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. Article 23 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"**§ 115C-341.1. Flexible Compensation Plan.**

Notwithstanding any other provisions of law relating to the salaries of employees of local boards of education, the State Board of Education is authorized to provide a plan of flexible compensation to eligible employees of local school administrative units for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize local school administrative units to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 2. Article 2 of Chapter 115D of the General Statutes is amended by adding a new section to read:

"**§ 115D-25.1. Flexible Compensation Plan.**

Notwithstanding any other provisions of law relating to the salaries of employees of community college boards of trustees, the State Board of Community Colleges is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the State Board may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the State Board decide to contract with a third party to administer the terms and conditions of a plan of flexible

compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 3. Article 1 of Chapter 116 of the General Statutes is amended by adding a new section to read:

"**§ 116-17.1. Flexible Compensation Plan.**

Notwithstanding any other provisions of law relating to the salaries of employees of The University of North Carolina, the Board of Governors of The University of North Carolina is authorized to provide a plan of flexible compensation to eligible employees of constituent institutions for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees under Articles 1, 3, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Board of Governors may authorize constituent institutions to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the Board of Governors decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 4. G.S. 143-34.1 reads as rewritten:

"**§ 143-34.1. Payrolls submitted to the Director of the Budget; approval of payment of vouchers; payment of required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security; support of hospital and medical insurance programs for retired members of certain associations, organizations, boards, etc.**

All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Controller, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Director of the Budget.

Required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for employees whose salaries are paid from general fund or highway fund revenues, or from department, office, institutional or agency receipts, or from non-State funds, shall be paid from the same source as the source of the employees' salaries. In those instances in which an employee's salary is paid in part from the general fund, or the highway fund, and in part from the department, office, institutional or agency receipts, or from non-State funds, the required salary-related contributions shall be paid from the general fund, or the highway fund, only to the extent of the proportionate part paid from the general fund, or highway fund, in support of the salary of such employee, and the remainder of the employer's contribution requirements shall be paid from the same source which supplies the remainder of such employee's salary. The requirements of this section as to the source of payment are also applicable to payments on behalf of the employee for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases. The State Controller shall approve the method of payment by State departments, offices, institutions and agencies for employer salary-related requirements of this section, and determine the applicability of the

section to an employer's salary-related contribution or payment in behalf of an employee.

Notwithstanding any other provisions of law relating to the salaries of officers and employees of departments, institutions, and agencies of State government, the Director of the Budget is authorized to provide a plan of flexible compensation to eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.1 for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees and officers under Article 1A of Chapter 120 of the General Statutes and Articles 1, 3, 4, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Director of the Budget may authorize State departments, institutions, and agencies to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this section. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 5. This act shall become effective January 1, 1991.

In the General Assembly read three times and ratified this the 28th day of July, 1990.

JAMES C. GARDNER
James C. Gardner
President of the Senate

J. L. MAVRETIC
J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 1003
HOUSE BILL 1679

AN ACT TO PROVIDE EARLY INTERVENTION, DEVELOPMENTAL SERVICES, AND EDUCATION TO HANDICAPPED CHILDREN FROM BIRTH TO FIVE YEARS OF AGE.

Whereas, the General Assembly finds that there is an urgent and substantial need to enhance the development of children from birth to their fifth birthday, including infants and toddlers, with or at risk for handicapping conditions and to minimize their potential for developmental delay; and

Whereas, the General Assembly finds that there is an urgent and substantial need to enhance the capacity of families to meet the special needs of their children from birth to their fifth birthday, including infants and toddlers, who have handicapping conditions; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 143B of the General Statutes is amended by adding a new Part to read:

"Part 13A. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age.

"**§ 143B-179.5. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age; establishment, composition, organization; duties, compensation, reporting.**

(a) There is established an Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age in the Department of Human Resources.

(b) The Interagency Coordinating Council for Early Intervention Services shall have 26 members, appointed by the Governor, for terms of two years and until their successors are appointed and qualify. The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members may succeed themselves for one term and may be appointed again, after being off the Council for one term.

The composition of the Council shall be as follows:

(1) At least three members who are parents of infants or toddlers eligible for services pursuant to G.S. 122C-3(13a) or of handicapped children aged three through six;

(2) At least three other members who are providers of early intervention services;

(3) Two members of the Senate, appointed from recommendations of the President Pro Tempore and two members of the House of Representatives, appointed from recommendations of the Speaker;

(4) At least one other member who is a person involved in staff development;

(5) Other members who represent the Department of Public Instruction, the Department of Human Resources, the Department of Environment, Health, and Natural Resources, and other appropriate agencies involved in the provision of or payment for early intervention services to infants and toddlers and their families; and

(6) At least eight members to represent the public at large.

(c) At the first meeting following the appointments, the Council shall elect a parent and a professional as cochairs, who may establish those standing and ad hoc committees and task forces as may be necessary to carry out the functions of the Council and appoint Council members or other individuals to serve on these committees and task forces. The Council shall meet at least quarterly. A majority of the Council shall constitute a quorum for the transaction of business.

(d) The Council shall advise the Departments of Human Resources, and Environment, Health, and Natural Resources, and other appropriate agencies in carrying out their early intervention services, and the Department of Public Instruction, and other appropriate agencies, in their activities related to the provision of special education services for preschoolers. The Council shall specifically address in its studies and evaluations that it considers necessary to its advising:

(1) The identification of sources of fiscal and other support for the early intervention system;

(2) The development of policies related to the early intervention services;

(3) The preparation of applications for available federal funds;

(4) The resolution of interagency disputes; and

(5) The promotion of interagency agreements.

(e) Members of the Council and parents on ad hoc committees and task forces of the Council shall receive travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) The Council shall prepare and submit an annual report to the Governor and to the General Assembly on the status of the early intervention system for eligible infants and toddlers and on the status of special education services for preschoolers.

All clerical and other services required by the Council shall be supplied by the Secretary of Human Resources and the Superintendent of Public Instruction, as specified by the interagency agreement authorized by G.S. 122C-112(a)(13).

"§ 143B-179.6. Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age; agency cooperation.

All appropriate agencies, including the Department of Human Resources, the Department of Environment, Health, and Natural Resources, and the Department of Public Instruction, and other public and private service providers shall cooperate with the Council in carrying out its mandate."

Sec. 2. G.S. 122C-3 reads as rewritten:

"§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

(1) 'Area authority' means the area mental health, developmental disabilities, and substance abuse authority.

(2) 'Area board' means the area mental health, developmental disabilities, and substance abuse board.

(3) 'Camp Butner reservation' means the original Camp Butner reservation as may be designated by the Secretary as having been

acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.

(4) 'City' has the same meaning as in G.S. 153A-1(1).

(5) 'Catchment area' means the geographic part of the State served by a specific area authority.

(6) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.

(7) 'Client advocate' means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.

(8) 'Commission' means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.

(9) 'Confidential information' means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. 'Confidential information' does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.

(10) 'County of residence' of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.

(11) 'Dangerous to himself or others' means:

a. 'Dangerous to himself' means that within the relevant past:

1. The individual has acted in such a way as to show:

I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or medical care, shelter, or self-protection and safety; and

II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a **prima facie** inference that the individual is unable to care for himself; or

2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of

suicide unless adequate treatment is given pursuant to this Chapter; or

3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

b. 'Dangerous to others' means that within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is **prima facie** evidence of dangerousness to others.

(12) 'Department' means the North Carolina Department of Human Resources.

(12a) 'Developmental disability' means a severe, chronic disability of a person which:

a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;

c. Is likely to continue indefinitely;

d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and

e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and coordinated; or

f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.

(13) 'Division' means the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department.

(13a) 'Eligible infants and toddlers' means children with or at risk for developmental delays or atypical development until:

a. They have reached their third birthday;

b. Their parents have requested to have them receive services in the preschool program for handicapped children established pursuant to Part 14 of Article IX of Chapter 115C of the General Statutes; and

c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday.

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early intervention services shall be appropriate to the individual child's age and development.

(13a b) 'Eligible psychologist' means a licensed practicing psychologist who has at least two years' clinical experience.

(14) 'Facility' means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:

a. An 'area facility', which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;

b. A 'licensable facility', which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;

c. A 'private facility', which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;

d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

e. A 'residential facility', which is a 24-hour facility that is not a hospital, including a group home;

f. A 'State facility', which is a facility that is operated by the Secretary;

g. A '24-hour facility', which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and

h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers.

(15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35A of the General Statutes.

(16) 'Habilitation' means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

(17) 'Incompetent adult' means an adult individual adjudicated incompetent.

(18) 'Intoxicated' means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.

(19) 'Law-enforcement officer' means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.

(20) 'Legally responsible person' means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; or (ii) when applied to a minor, a parent, guardian, a person standing **in loco parentis**, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.

(21) 'Mental illness' means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.

(22) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.

(23) 'Mentally retarded with accompanying behavior disorder' means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.

(24) 'Next of kin' means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation

has been made. 'next of kin' means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.

(25) 'Operating costs' means expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.

(26) Repealed by Session Laws 1987, c. 345, s. 1.

(27) 'Outpatient treatment' as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.

(28) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.

(29) 'Physician' means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.

(30) 'Provider of support services' means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.

(30a) 'Psychologist' means an individual licensed to practice psychology under Chapter 90. The term 'eligible psychologist' is defined in subdivision (13a).

(31) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.

(32) 'Responsible professional' means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.

(33) 'Secretary' means the Secretary of the Department of Human Resources.

(34) 'Single portal of entry and exit policy' means an admission and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be

designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include the complete exclusion of clients from admission to any specific State or area facility.

(35) 'Single portal area' means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.

(36) 'Substance abuse' means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal.

(37) 'Substance abuser' means an individual who engages in substance abuse."

Sec. 3. G.S. 122C-112(a) reads as rewritten:

"**§ 122C-112. Powers and duties of the Secretary.**

(a) The Secretary shall:

(1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;

(2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;

(3) Operate State facilities and adopt rules pertaining to their operation;

(4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;

(5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;

(6) Adopt rules governing the expenditure of all area authority funds;

(7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;

(8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter;

(9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;

(10) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse;

(11) Administer and enforce rules that are conditions of participation in federal or State financial aid; ~~and~~

(12) Carry out ~~G.S. 122C-361.~~ G.S. 122C-361; and

(13) Coordinate and facilitate the development and administration of the early intervention system for eligible infants and toddlers and shall assign among the cooperating agencies the responsibility, including financial responsibility, for services.

The Secretary shall be advised by the Interagency Coordinating Council for Handicapped Children from Birth to Five Years of Age, established by G.S. 143B-179.5, and may enter into formal interagency agreements to establish the collaborative relationships with the Department of Environment, Health, and Natural Resources, the Department of Public Instruction, other appropriate agencies, and other public and private service providers necessary to administer the system and deliver the services.

The Secretary shall adopt rules to implement the early intervention system, in cooperation with all other appropriate agencies."

Sec. 4. G.S. 122C-146 reads as rewritten:

"**§ 122C-146. Fee for service.**

The area authority and its contractual agencies shall prepare fee schedules for services and shall make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals able to pay, including insurance and third-party ~~payment.~~ payment, except that individuals may not be charged for services involving multidisciplinary evaluations, intervention plan development, and case management services provided to eligible infants and toddlers and their families. This exemption from charges does not exempt insurors or other third-party payors from being charged for payment for these services. However, no individual may be refused services because of an inability to pay. All funds collected from fees from area authority operated services shall be used for the fiscal operation or capital improvements of the area authority's programs. The collection of fees by an area authority may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue."

Sec. 5. Article IX of Chapter 115C of the General Statutes is amended by adding a new Part to read:

"Part 14. Handicapped Children, Ages Three to Five.

"**§ 115C-146.1. Definitions.**

The term 'preschool handicapped children' means all handicapped children:

(1) Who have reached their third birthday and whose parents have requested services from the public schools, which services shall start no later than the beginning of the school year immediately following the children's third birthday;

(2) Who are not eligible to enroll in public kindergarten; and

(3) Who, because of permanent or temporary mental, physical, or emotional handicaps, need special education and related services in order to prepare them to benefit from the educational programs provided by the public schools, beginning with kindergarten. This term includes children who are mentally retarded, learning disabled, seriously emotionally disturbed, autistic, cerebral palsied, orthopedically impaired, hearing impaired, speech impaired, blind or visually impaired, multiply handicapped, or other health impaired. All evaluations performed pursuant to this Part shall be appropriate to the individual child's age and development.

"**§ 115C-146.2. Entitlement to services.**

Preschool handicapped children are entitled, at no cost to their parents or guardians, to individualized programs specifically designed to meet their unique needs for special education and related services.

"**§ 115C-146.3. Obligation to provide services.**

(a) The General Assembly finds:

(1) That preschool handicapped children will benefit from the special education and related services required by this Part;

(2) That the General Assembly has evaluated the known needs of the State and has endeavored to satisfy those needs in comparison to the social and economic problems of the State;

(3) That the funds appropriated to serve these preschool handicapped children are a reasonable amount to provide such children with special education and related services; and

(4) That, therefore, (i) State funds appropriated to implement this Part are the only State funds for public schools that may be used to provide special education and related services to preschool handicapped children; and (ii) preschool handicapped children will continue to be served by all other State funds they are otherwise entitled to.

(b) The Department of Public Education shall cause local school administrative units to make available special education and related services to all preschool handicapped children whose parents or guardians request these services.

(c) State funds appropriated to implement the provisions of this Part shall be used to supplement and not supplant existing federal, State, and local funding for the public schools.

(d) Related services provided under this Part shall be provided by qualified services providers. The term 'qualified services provider' means a person who meets State standards for licensure or State Board of Education standards for certification for a specific profession or discipline.

To the extent that the State Board of Education standards include provisions for certification that are less than the standard for certification or licensure for a specific profession, the Department of Public Instruction may certify individuals on a temporary or provisional basis, provided that the State Board of Education shall establish a comprehensive plan and reasonable time lines to ensure that only professionals who meet the appropriate standard for licensure or certification may be employed in the future.

"**§ 115C-146.4. Rules.**

The State Board of Education shall adopt rules implementing this Part, including rules necessary in order to receive federal funding pursuant to Part B of the Education of the Handicapped Act, 20 U.S.C. § 1400 **et seq.** These rules shall include a provision that, where a local education agency finds that appropriate services are available from other public agencies or private organizations, that local education agency shall, in accordance with G.S. 115C-149, contract for those services rather than provide them directly. These rules shall also include a provision that, where a local education agency finds that a child is already receiving appropriate services, that local education agency shall continue those services as long as appropriate."

Sec. 6. Sections 1 through 4 of this act shall become effective July 1, 1990, and Section 5 of this act shall become effective July 1, 1991, if and only if specific funds are appropriated for the specific programs established by this act. Funds appropriated for the 1990-91 fiscal year or for any fiscal year in the future do not constitute any entitlement to services beyond those provided for that fiscal year. Nothing in this act creates any rights except to the extent that funds are appropriated by the State to implement its provisions from year to year and nothing in this act obligates the General Assembly to appropriate any funds to implement its provisions.

In the General Assembly read three times and ratified this the 20th day of July, 1990.

JAMES C. GARDNER

James C. Gardner
President of the Senate

J. L. MAVRETIC

J. L. Mavretic
Speaker of the House of Representatives

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION
RATIFIED BILL

CHAPTER 936
HOUSE BILL 2335

AN ACT TO IMPLEMENT THE JOINT REPORT TO PROVIDE MANAGEMENT INCENTIVES AND FLEXIBILITY FOR THE CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA AND TO REQUIRE THE CREATION AND ENHANCEMENT OF A PROGRAM OF PUBLIC SERVICE AND TECHNICAL ASSISTANCE TO THE PUBLIC SCHOOLS.

Whereas, the 1989 General Assembly in Chapter 500 of the 1989 Session Laws directed the Board of Governors and the Office of State Budget and Management to review the need for management incentives and flexibility at the campus level in order to achieve budget savings and increased efficiency of operations; and

Whereas, the work of the Board of Governors and the Office of State Budget and Management has been completed in accordance with the legislative directive and a joint report entitled, "Management Incentives and Flexibility," has been made to the 1989 General Assembly, 1990 Regular Session; and

Whereas, the 1989 General Assembly desires that the joint report be fully implemented in phases beginning with the 1990-91 fiscal year; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Budget Flexibility. (a) The following budgetary changes are authorized effective July 1, 1990, and shall be reflected in the 1991-93 budget presentations to the 1991 General Assembly and in the 1991-93 budget certifications to the constituent institutions of The University of North Carolina:

(1) The existing budget purposes or programs of General Academic Support, Student Services, Institutional Support, and Physical Plant Operations shall be consolidated into a new purpose or program entitled "General Institutional Support."

(2) Summary level objects of expenditure shall be used for budgetary control purposes for the nonpersonnel accounts of Supplies and Materials, Current Obligations, Utilities, Fixed Charges and Expenses, Capital Outlay, and Library Books and Journals.

(3) Among the nonpersonnel objects of expenditure of Supplies and Materials, Current Obligations, Fixed Charges and Expenses, and Capital Outlay, budget adjustments may be authorized by the constituent institutions within a single budget purpose or program without prior approval from the Director of the Budget.

(4) Unspent utilities funds at the constituent institutions may be utilized to fund utility and energy-savings projects through their operating budgets, subject to the approval of the Director of the Budget.

(5) For budgetary reporting and accounting purposes, the constituent institutions of The University of North Carolina shall continue to provide expenditure data at such detailed levels as required by the Director of the Budget. Presentation, control, and reporting of salary and salary-related objects of expenditure shall be in accordance with applicable statutes and the directives of the Director of the Budget.

(6) Detailed expenditure information for objects of expenditure for the existing budget purposes of General Academic Support, Student Services, Institutional Support, and Physical Plant Operations shall be available to the Appropriations Committees of the General Assembly on a regular basis.

(7) Funds from the "General Institutional Support" budget purpose or program may be transferred into the "Regular Term Instruction" and "Libraries" budget purpose or program. These transfers shall be reported to the Board of Governors of The University of North Carolina annually. Funds may not be transferred from the "Regular Term Instruction" or "Libraries" budget purposes or program except in accordance with the provisions of G.S. 143-23(a1).

(b) G.S. 116-36.3 is repealed.

(c) G.S. 116-36.1(g) reads as rewritten:

"(g) As used in this section, 'trust funds' means:

(1) Moneys, or the proceeds of other forms of property, received by an institution as gifts, devises, or bequests that are neither presumed nor designated to be gifts, devises, or bequests to the endowment fund of the institution;

(2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;

(3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

(4) Moneys collected by an institution to support extracurricular activities of students of the institution;

(5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;

(6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises ~~except student auxiliary services identified in G.S. 116-36.3~~ , including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;

(7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care ~~provider.~~ provider;

(8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift, devise, or bequest or through expenditure of moneys defined in this subsection (g) as 'trust funds,' except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of moneys received as a grant from a State ~~agency~~ agency;

(9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs."

Sec. 2. Overhead Receipts. (a) It is the intention of the General Assembly that overhead receipts derived from reimbursement of indirect costs on contracts and grants shall not continue to be budgeted as offsets to General Fund appropriations for current operations of the constituent institutions of The University of North Carolina.

(b) The base or continuation budget requests of the constituent institutions of The University of North Carolina presented to the 1991 General Assembly shall reflect a phased reduction in such offsets during the 1991-93 biennium. For the 1991-92 fiscal year this reduction shall lower the offset rate from thirty percent (30%) to twenty-five percent (25%), and for the 1992-93 fiscal year this reduction shall lower the offset rate from twenty-five percent (25%) to twenty percent (20%).

(c) At such time as the intention of the General Assembly with respect to phaseout of such offsets has been implemented in the budgets of the constituent institutions of The University of North Carolina, special fund codes for overhead receipts shall be transferred to the category of institutional trust funds for budgetary and accounting purposes.

Sec. 3. Purchasing Procedures. (a) G.S. 143-52 reads as rewritten:

"**§ 143-52. Competitive bidding procedure; consolidation of estimates by Secretary; bids; awarding of contracts.**

As feasible, the Secretary of Administration will compile and consolidate all such estimates of supplies, materials, equipment and contractual services needed and required by State departments, institutions and agencies to determine the total requirements of any given commodity. Where such total requirements will involve an expenditure in excess of ~~five thousand dollars ($5,000)~~ the expenditure benchmark established under the provisions of G.S. 143-53.1 and where the competitive bidding procedure is employed as hereinafter provided, sealed bids shall be solicited by advertisement in a newspaper of statewide circulation at least once and at least 10 days prior to the date designated for opening of the bids and awarding of the contract: Provided, other methods of advertisement may be adopted by the Secretary of Administration when such other method is deemed more advantageous for certain items or commodities. Regardless of the amount of the expenditure, under the competitive bidding procedure it shall be the duty of the Secretary of Administration to solicit bids direct by mail from qualified sources of supply. Except as otherwise provided under this Article, contracts for the purchase of supplies, materials or equipment shall be based on competitive bids and acceptance made of the lowest and best bid(s) most advantageous to the State as determined upon consideration of the following criteria: prices offered; the quality of the articles offered; the general reputation and performance capabilities of the bidders; the substantial conformity with the specifications and other conditions set forth in the request for bids; the

suitability of the articles for the intended use; the personal or related services needed; the transportation charges; the date or dates of delivery and performance; and such other factor(s) deemed pertinent or peculiar to the purchase in question, which if controlling shall be made a matter of record. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the Secretary of Administration, which rules and regulations shall prescribe for the manner, time and place for proper advertisement for such bids, the time and place when bids will be received, the articles for which such bids are to be submitted and the specifications prescribed for such articles, the number of the articles desired or the duration of the proposed contract, and the amount, if any, of bonds or certified checks to accompany the bids. Bids shall be publicly opened. Any and all bids received may be rejected. Each and every bid conforming to the terms of the invitation, together with the name of the bidder, shall be tabulated or otherwise entered as a matter of record, and all such records with the name of the successful bidder indicated thereon shall, after the award of the contract, be open to public inspection. Provided, that trade secrets, test data and similar proprietary information may remain confidential. A bond for the faithful performance of any contract may be required of the successful bidder at bidder's expense and in the discretion of the Secretary of Administration. After contracts have been awarded, the Secretary of Administration shall certify to the departments, institutions and agencies of the State government the sources of supply and the contract price of the supplies, materials and equipment so contracted for. Prior to adopting other methods of advertisement under this section, the Secretary of Administration may consult with the Advisory Budget Commission. Prior to adopting rules and regulations under this section, the Secretary of Administration may consult with the Advisory Budget Commission."

(b) G.S. 143-53(2) reads as rewritten:

"(2) Prescribing routine for securing bids on items that do not exceed ~~five thousand dollars ($5,000) in value~~ the bid value benchmark established under the provisions of G.S. 143-53.1."

(c) Chapter 143 of the General Statutes is amended by adding a new section to read:

"**§ 143-53.1. Setting of benchmarks; increase by Secretary.**

On and after July 1, 1990, the expenditure benchmark prescribed by G.S. 143-52 with respect to competitive bid procedures and the bid value benchmark authorized by G.S. 143-53(2) with respect to rule making by the Secretary of Administration for competitive bidding shall be ten thousand dollars ($10,000); provided, the Secretary of Administration may, in his discretion, increase the benchmarks effective as of the beginning of any fiscal biennium of the State commencing after June 30, 1992, in an amount whose increase, expressed as a percentage, does not exceed the rise in the Consumer Price Index during the fiscal biennium next preceding the effective date of the benchmark increase."

(d) The Department of Administration, through the Division of Purchase and Contract, and in consultation with the constituent institutions of The University of North Carolina, shall undertake a review of existing purchasing procedures for the purpose of making such modifications and consolidations of present procedures, consistent with sound procurement policies, as may be needed to expedite the acquisition of supplies, materials, and equipment required for the execution of research and other sponsored projects.

(e) G.S. 143-56 reads as rewritten:

"**§ 143-56. Certain purchases excepted from provisions of Article.**

Unless as may otherwise be ordered by the Secretary of Administration, the purchase of supplies, materials and equipment through the Secretary of Administration shall be mandatory in the following cases:

(1) Published books, manuscripts, maps, pamphlets and periodicals.
(2) Perishable articles such as fresh vegetables, fresh fish, fresh meat, eggs, and others as may be classified by the Secretary of Administration.

Purchase through the Secretary of Administration shall not be mandatory for a purchase of supplies, materials or equipment for the General Assembly if the total expenditures is less than ~~five thousand dollars ($5,000)~~ the expenditure benchmark established under the provisions of G.S. 143-53.1 or for group purchases made by hospitals through a competitive bidding purchasing program, as defined in G.S. 143-129.

All purchases of the above articles made directly by the departments, institutions and agencies of the State government shall, whenever possible, be based on competitive bids. Whenever an order is placed or contract awarded for such articles by any of the departments, institutions and agencies of the State government, a copy of such order or contract shall be forwarded to the Secretary of Administration and a record of the competitive bids upon which it was based shall be retained for inspection and review."

Sec. 4. Sales and Use Taxes on Contract and Grant Purchases. G.S. 105-164.14(b) reads as rewritten:

"(b) The Secretary of Revenue shall make refunds semiannually to hospitals not operated for profit (including hospitals and medical accommodations operated by an authority created under the Hospital Authorities Law, Article 2 of Chapter 131E), educational institutions not operated for profit, churches, orphanages and other charitable or religious institutions and organizations not operated for profit of sales and use taxes paid under this Article, except under G.S. 105-164.4(4a), by such institutions and organizations on direct purchases of tangible personal property for use in carrying on the work of such institutions or organizations. Sales and use tax liability indirectly incurred by such institutions and organizations on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired for such institutions and organizations for carrying on their nonprofit activities shall be construed as sales or use tax liability incurred on direct purchases by such institutions and organizations, and such institutions and organizations may obtain refunds of such taxes indirectly paid. The Secretary of Revenue shall also make refunds semiannually to all other hospitals (not specifically excluded herein) of sales and use tax paid by them on medicines and drugs purchased for use in carrying out the work of such hospitals. This subsection does not apply to organizations, corporations, and institutions that are owned and controlled by the United States, the State, or a unit of local government, except hospital facilities created under Article 2 of Chapter 131E of the General Statutes and nonprofit hospitals owned and controlled by a unit of local government that elect to receive semiannual refunds under this subsection instead of annual refunds under subsection (c). In order to receive the refunds herein provided for, such institutions and organizations shall file a written request for refund covering the first six months of the calendar year on or before the fifteenth day of October next following the close of said period, and shall file a written request for refund covering the second six months of the calendar year on or before the fifteenth day of April next following the close of that period. Such requests for refund shall be substantiated by such proof as the Secretary of Revenue may require, and no refund shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may require. Not withstanding the foregoing provisions of this subsection, the constituent institutions of The University of North Carolina may obtain in the manner prescribed by this Article the refund of sales and use tax

paid by them on or after January 1, 1992, for tangible personal property acquired by them through the expenditure of contract and grant funds."

Sec. 5. Over-Realized Receipts. (a) G.S. 143-27 reads as rewritten:

"**§ 143-27. Appropriations to educational, charitable and correctional institutions are in addition to receipts by them.**

All appropriations now or hereafter made to the educational institutions, and to the charitable and correctional institutions, and to such other departments and agencies of the State as receive moneys available for expenditure by them are declared to be in addition to such receipts of said institutions, departments or agencies, and are to be available as and to the extent that such receipts are insufficient to meet the costs anticipated in the budget authorized by the General Assembly, of maintenance of such institutions, departments, and agencies; Provided, however, that if the receipts, other than gifts and grants that are unanticipated and are for a specific purpose only, collected in a fiscal year by an institution, department, or agency exceed the receipts certified for it in General Fund Codes or Highway Fund Codes, the Director of the Budget shall decrease the amount he allots to that institution, department, or agency from appropriations from that Fund by the amount of the excess, unless the Director of the Budget finds that the appropriations from that Fund are necessary to maintain the function that generated the receipts at the level anticipated in the certified Budget Codes for that Fund. Notwithstanding the foregoing provisions of this section, receipts within The University of North Carolina realized in excess of budgeted levels shall be available, up to a maximum of ten percent (10%) above budgeted levels, for each Budget Code, in addition to appropriations, to support the operations generating such receipts, as approved by the Director of the Budget.

The Office of State Budget and Management shall report to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division of the Legislative Services Office within 30 days after the end of each quarter on expenditures of receipts in excess of the amounts certified in General Fund Codes or Highway Fund Codes that did not result in a corresponding reduced allotment from appropriations from that Fund."

(b) Effective with the 1991-93 fiscal biennium, revenues from new or increased course fees authorized by the Board of Governors of The University of North Carolina and the associated expenditures shall be incorporated into the base or continuation budget requests of the constituent institutions of The University of North Carolina presented to the General Assembly. New or increased course fees approved by the Board of Governors after the operating budget is approved by the General Assembly may be budgeted with the approval of the Director of the Budget, but shall be incorporated into the next base budget requests of the constituent institutions.

Sec. 6. Personnel Administration. The Office of State Personnel and The University of North Carolina General Administration are directed to continue their discussions in the areas of the appropriate classifications of positions between those subject to the State Personnel Act (SPA) and those exempt from the State Personnel Act (EPA), development of guidelines to facilitate these classifications, and the need for campus flexibility in administering positions funded from contracts and grants.

Sec. 7. The Board of Governors of The University of North Carolina shall adopt standards to create and enhance an organized program of public service and technical assistance to the public schools. This program shall:

(1) Provide systematic access for public schools to consultation and advice available from members of the faculties of the constituent institutions;

(2) Facilitate and encourage research in the public schools and the application of the results of this research;

(3) Link the education faculties of the constituent institutions with public school teachers and administrators through public service requirements for the education faculties; and

(4) Create partnerships among all constituent institutions, their schools or departments of education, and the maximum number of public schools that could benefit from these partnerships.

Sec. 8. This act shall become effective July 1, 1990, except that G.S. 116-36.1(g)(9) as added by Section 1(c) of this act shall become effective July 1, 1991, and except that Section 5(a) of this act shall become effective July 1, 1991.

In the General Assembly read three times and ratified this the 16th day of July, 1990.

JAMES C. GARDNER
James C. Gardner
President of the Senate

J. L. MAVRETIC
J. L. Mavretic
Speaker of the House of Representatives